



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5947 OF 2024
WITH
CIVIL APPLICATION NO.8901 OF 2024
IN WP/5947/2024

M/s. A.C. Shaikh Contractors,
through its Authorized Representative
Sahil Khan s/o Arshad Khan,
Age : 25 years, Occu: Business
R/o. Gulshan Palace,
Juna Mangalwar Bazar
Opp. Tamboli Masjit, Ahmednagar

... PETITIONER

VERSUS

1. The State of Maharashtra
through Principal Secretary,
Department of Public Works,
Mantralaya, Mumbai.
2. Chief Engineers,
Public Works Department,
Division Chhatrapati Sambhajnagar,
Chhatrapati Sambhajnagar.
3. Superintending Engineer,
Public Works Department,
Division Chhatrapati Sambhajnagar,
Chhatrapati Sambhajnagar.
4. Executive Engineer,
Public Works Department,
Division Chhatrapati Sambhajnagar,
Chhatrapati Sambhajnagar.
5. AGC Infracon Pvt. Ltd.
Formerly AG Constructions,
AG house, near PNG Jewellers,
CIDCO, Aurangabad.
6. J.P. Enterprises,
through its lead partner,
M/s. J.P. Enterprises,
403, Konark Shram, 156,
Tardeo Road, Mumbai – 400034

(respondents No.5 and 6 added as per order
dated 21.06.2024)

... RESPONDENTS

...

**WITH
WRIT PETITION NO.7704 OF 2024
WITH CIVIL APPLICATION NO.10159 OF 2024
IN WP/7704/2024 WITH CIVIL APPLICATION NO.10457/2024
IN WP/7704/2024 WITH CIVIL APPLICATION NO.11267/2024
IN WP/7704/2024**

AGC Infracon Pvt. Ltd.,
through its authorized signatory,
Mohammad Arif Khan Abdul Gaffur Khan,
Age : 48 years, Occu: Business
R/o. Plot No.147, N-3, CIDCO,
Chh. Sambhajanagar

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through Additional Chief Secretary,
Public Works Department
Maharashtra State, Mantralaya, Mumbai.
2. The Chief Engineer,
Public Works Region,
Chh. Sambhajanagar.
3. The Superintending Engineer,
Public Works Circle,
Chh. Sambhajanagar.
4. The Executive Engineer,
Public Works Division,
Chh. Sambhajanagar.
5. M/s. J.P. Enterprises (JV),
through its Lead partner,
M/s. J.P. Enterprises, having
Registered Office at 403,
Konark Shram, 156
Tardeo Road, Mumbai – 400 034
6. M/s. J.P. Enterprises,
having registered office at 403,
Konark Shram, 156
Tardeo Road, Mumbai – 400 034
7. Shrinivas Katkade,
Age: Major, Occu: currently working as
The Chief Engineer, Public Works Region,
Chh. Sambhajanagar.
R/o. Bandhkam Bhavan, Snehnagar, Adalat Road,
Chh. Sambhajanagar.

(Respondents No.7 to 9 added as per
order dated 25.09.2024)

8. S.S. Bhagat,
Age : Major, Occu: currently working as
The Superintendent Engineer, Public Works
Circle, Chh. Sambhajinagar
R/o. Bandhkam Bhavan, Snehnagar, Adalat Road,
Chh. Sambhajinagar.
9. Ashok Waman Yerekar,
Age : Major, Occu: currently working as
The Executive Engineer, Public Works Division,
Chh. Sambhajinagar
R/o. The Office of Executive Engineer,
PWD, Padampura, Chh. Sambhajinagar ... **RESPONDENTS**

...

**WITH
WRIT PETITION NO.9648 OF 2024**

M/s. J.P. Enterprises (JV),
through its Lead Partner,
M/s. J.P. Enterprises,
having registered office at
403, Konark Sharm, 156,
Tardeo Road, Mumbai – 400 034,
through authorized signatory
Mahendra Sing, Age : 29 years,
Occu: Service, having office at
above mentioned address. ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through the Principal Secretary,
Public Works Department,
Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Chief Engineer,
(Public Works Department),
Public Works Region,
Chhatrapati Sambhajinagar.
3. The Superintending Engineer,
(Public Works Department),
Public Works Circle,
Chhatrapati Sambhajinagar
4. The Executive Engineer,
(Public Works Department),
Public Works Division,
Chhatrapati Sambhajinagar.

5. Prashant Bansilal Bamb,
Member Legislative Assembly,
State of Maharashtra
Having District Office at -
CTS No.19381/8/1
Bansilal Nagar, Station Road,
Aurangabad.
(Permanent Office, at
Post Lasur Station, Tq. Gangapur,
Dist. Aurangabad)
Maharashtra – 423702
Fax No.(022) 22886017

... **RESPONDENTS**

...
Mr. Girish K. Naik Thigle, advocate for petitioner
in WP/5947/2024 with CA/8901/2024

Mr. Devdatt P. Palodkar, advocate for petitioner
in WP/7704/2024 with CA/10159/2024,
CA/10457/2024 and CA/11267/2024

Mr. Amol K. Gawali, advocate for petitioner in WP/9648/2024 and
Advocate for Respondents No.5 and 6 in WP/5947/2024 with
CA/8901/2024 and in WP/7704/2024 with CA/10159/2024,
CA/10457/2024 and CA/11267/2024

Mr. P.G. Godhamgaonkar, Special counsel for Respondent Nos.2 to 4.
Ms. P.J. Bharad, AGP for respondent/State.

...
**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

**Reserved on : 04.02.2025
Pronounced on : 09.05.2025**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule in all the petitions. It is made returnable
forthwith. The learned AGP and the learned advocates for the respective
respondents waive service. At the joint request of the parties and in the
peculiar facts and circumstances leading to the filing of these petitions,
which are all concerning the same public work, sought to be carried out

by the Public Works Department of the State, in order to avoid repetition, the petitions are being disposed of by this common judgment.

2. In order to avoid confusion, the parties are being referred to by their individual nomenclature, rather than their status in the petitions, obviously because these are the petitions filed by three participants in the tender process.

3. The checkered history leading to filing of these petitions and the sequence of events regarding which there is no factual dispute can be culled down as under :

- i. The Executive Engineer of the PWD, Chhatrapati Sambhajanagar published E-tender Notice No.152 for the year 2023-2024 (Engineering Procurement and Construction - EPC), Request for Proposal (RFP) for Construction of Four Lane Road from Nagarnaka – Padegaon - Daulatabad T-Point, NH-52 (Old NH-211) near Aurangabad City now Chhatrapati Sambhajanagar, District Chhatrapati Sambhajanagar on 18.12.2023.
- ii. Initially three entities participated by submitting their bids namely; S.I. Yadav, J.P. Enterprises and A.G. Construction.
- iii. The Tender Evaluation Committee scrutinized the bids and notified the shortcomings to the bidders. After extending such opportunity only A.G. Construction remained eligible to participate.

- iv. As per the Government Resolution in the Public Works Division dated 27.09.2018, clause 4.3, since the tender process could not proceed ahead, there being only one bidder, a second call was issued in the form of notice inviting fresh bids on 05.03.2024.
- v. In response to the second call three bidders participated namely M/s. A.C. Shaikh Contractors (petitioner in WP/5947/2024), M/s. J.P. Enterprises (JV) (petitioner in WP/9648/2024) and A.G.C. Infracon Pvt. Ltd. (petitioner in WP/7704/2024).
- vi. The tender evaluation committee scrutinized the individual bids and found that only M/s. J.P. Enterprises (JV) and A.G.C. Infracon Pvt. Ltd. qualified the technical bid, on 12.06.2024
- vii. M/s. A.C. Shaikh Contractors was disqualified, on the ground that it was not fulfilling the conditions regarding the bid capacity and the previous experience of executing similar type of work, as contained in Clause No.2.2 and was not possessing machinery/equipment as contained in Clause No.2.2.2.1(A). Feeling aggrieved by such disqualification M/s. A.C. Shaikh Contractors preferred the writ petition and challenged the communication dated 12.06.2024.
- viii. By the order dated 21.06.2024, while directing notices to be issued to the respondents it was directed that the tender

process could go on but no work order shall be issued till the next date, 28.06.2024.

- ix. In the meanwhile A.G.C. Construction Pvt. Ltd. submitted a complaint with the Executive Engineer on 21.02.2024 alleging that M/s. J.P. Enterprises (JV) was wrongly qualified in the technical evaluation and rather it had indulged in fraud by quoting misleading figures regarding its turn over and regarding the work done/work in hand.
- x. A.G.C. Construction Pvt. Ltd. (JV) further alleged that M/s. J.P. Enterprises (JV) had obtained a false certificate of a Chartered Accountant which was dated 16.10.2023 in respect of the tender notice published on 18.12.2023. It was also alleged that in order to cover up such fraud another certificate of a Chartered Accountant was uploaded on 16.01.2024 and the figures mentioned in both the certificates did not tally.
- xi. Instead of black listing M/s. J.P. Enterprises (JV) for resorting to such fraud and in order to protect it, it was disqualified for trivial reasons in the first call and allege about PWD authorities being hand in gloves with M/s. J.P. Enterprises (JV) and taking shelter of the Government Resolution dated 27.09.2018 under the guise of only A.G.C. Construction Pvt. Ltd. was left in the fray, the second call was issued.
- xii. While submitting RFP, M/s. J.P. Enterprises put up its bid in

the second call as a joint venture indicating it to be a lead member having 80% share.

- xiii. Financial bids were open on 21.06.2024 and M/s. J.P. Enterprises (JV) turned out to be the lowest bidder (L-1).
- xiv. M/s. J.P. Enterprises which had participated stand alone, in the first call and was held to be disqualified but did not challenge such disqualification during technical evaluation.
- xv. Questioning qualification of M/s. J.P. Enterprises (JV), A.G.C. Infracon Pvt. Ltd. (JV) filed Writ Petition No.7704/2024 on 20.07.2024, initially seeking disqualification of M/s. J.P. Enterprises (JV) and offering to undertake the work at the same rate as quoted by M/s. J.P. Enterprises (JV) for direction against PWD authorities for issuing work order in response to the second call of Tender Notice No.152/2023-2024 dated 05.03.2024.
- xvi. By the order dated 26.07.2024 in W.P. No.7704/2024 filed by A.G.C. Infracon Pvt. Ltd. (JV), while directing notice to be issued, it was also directed that no work order shall be issued regarding the second call in which M/s. J.P. Enterprises (JV) was found to be the 'L-1' bidder.
- xvii. By way of Civil Application No.7511/2024 in W.P.No.7704/2024, A.G.C. Infracon Pvt. Ltd. (JV) additionally, alleged that though M/s. J.P. Enterprises was technically

eligible in the first call, in order to save/protect it from being black listed for having resorted to fraud, the PWD authorities disqualified it on the grounds which were not, in fact, available for disqualification viz. non-compliance with clause No.2.2.2.2(ii) regarding experience of carrying out similar type of work and clause No.2.2.2.1(A) for failure to produce SCADA certificate for Concrete Batch Mix Plant and Vibratory Roller.

- xviii. By way of amendment M/s. A.G.C. Infracon Pvt. Ltd. (JV) in its petition alleged that in order to further protect M/s. J.P. Enterprises and in collusion with M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) the PWD authorities were intending to recall the tender process. The individuals holding the offices in the PWD department were added as respondents Nos.7 to 9. A direction was solicited for conducting inquiry against them. An ad-interim relief preventing them from recalling the tender process was also solicited.
- xix. When writ petitions filed by M/s. A.C. Shaikh Contractors and A.G.C. Infracon Pvt. Ltd. (JV) were listed before the Court on 22.08.2024, learned advocate Mr. Godhamgaonkar appeared as a special counsel on behalf of the PWD authorities and informed the Court that the earlier tender process was recalled on 19.08.2024 and a fresh tender notice No.149 for

2024-2025 was published for the same work and further submitted that in view of such supervening events the petitions were rendered infructuous.

- xx. The learned advocates Mr. Palodkar and Mr. Thigle for A.G.C. Infracon Pvt. Ltd. (JV) and M/s. A.C. Shaikh Contractors alleged that the decision to cancel the earlier tender process was taken in a clandestine and surreptitious manner and was resorted to wriggle out of the mess created by the PWD authorities and expressed that appropriate amendment would be sought in their respective petitions. They also solicited a direction for maintaining *status quo* in respect of the fresh tender notice No.149 for 2024-2025.
- xxi. Observing the sequence of events, in which on the previous day A.G.C. Infracon Pvt. Ltd. (JV) was allowed to amend the petition and even was praying for ad interim relief restraining the PWD authorities from recalling the tender process and on the very next day a statement was made on their behalf about recalling of the tender process and issuance of a fresh tender notice, by the order dated 22.08.2024 *status quo* as was obtaining on that day was directed to be maintained in respect of the fresh tender notice No.149 for 2024-2025 and leave was granted to M/s. A.C. Shaikh Contractors and A.G.C. Infracon Pvt. Ltd. (JV) to amend the petitions.

- xxii. By carrying out necessary amendment in both the petitions prayers were added seeking quashment of the fresh tender being E-tender Notice No.149 for 2024-2025 (EPC) issued by the Executive Engineer, Chhatrapati Sambhajanagar on 19.08.2024 and a further direction was solicited for completion of the tender process pursuant to the E-tender Notice No.152/2023-2024 (EPC) (Second Call of the first tender).
- xxiii. In the meanwhile M/s. J.P. Enterprises (JV) and M/s. J.P. Enterprises caused appearance in both the petitions through their learned advocate Mr. Gawali in whose presence, the *status quo* was ordered in respect of the fresh Tender Notice No.149 for 2024-2025.
- xxiv. M/s. J.P. Enterprises (JV) filed Writ Petition No.9648/2024 on 03.09.2024 by merely adding the PWD authorities and a Member of the Legislative Assembly of the State, seeking a *writ of quo warranto* and prayed for quashment and setting aside of the decision dated 19.08.2024 regarding cancellation of the Tender Notice No.152 for 2023-2024 dated 18.12.2023 and seeking quashment and setting aside of the Tender Notice No.149 for 2024-2025 dated 19.08.2024 and soliciting a direction for issuance of work order having been found L-1 bidder in the second call of the first tender Notice No.152 for

2023-2024.

- xxv. A.G.C. Infracon Pvt. Ltd. (JV) filed Civil Application No.10159/2024 in Writ Petition No.7704/2024 seeking amendment after it was noticed that in spite of the direction of this Court of maintaining *status quo* in respect of E-tender Notice No.149/2024-2025 dated 19.08.2024, on 09.09.2024 even that tender notice was recalled.
- xxvi. Mr. Godhamgaonkar on behalf of the PWD authorities submitted, as recorded in the order dated 18.09.2024 that due to communication gap and due to administrative transfer of staff, erroneously the tender process was cancelled and a second call in Tender Notice No.149/2024-2025 was issued. He further made statement on their behalf that they would not go ahead with the second call of the Tender Notice No.149 of 2024-2025.
- xxvii. Though notice was directed to be issued to the respondents that is PWD authorities and the State in the petition filed by J.P. Enterprises (JV), notice was not directed to be issued to respondent No.5 therein who is a Member of the Legislative Assembly.
- xxviii. Reproducing the sequence of events as mentioned herein, and after being informed that in spite of the order dated 18.09.2024 passed on Civil Application No.10159/2024, and

in spite of ad interim relief granted in terms of prayer clause 'C', thereby staying the effect, implementation and operation of the order/notice dated 09.09.2024 recalling the Tender Notice No.149/2024-2025 as uploaded on the e-procurement website and further noticing that in spite of granting stay to the second call issued in the tender Notice No.149 for 2024-2025, the financial bids were opened, by a specific order, after hearing Mr. Godhamgaonkar and soliciting the names of individuals, holding the respective posts, a notice of contempt was directed to be issued to each of them in the prescribed format in accordance with the rules framed by the Bombay High Court under the Contempt of Courts Act, 1971.

- xxix. The respondent – PWD authorities filed their affidavit-in-reply in Writ Petition No.7704/2024 of A.G.C. Infracon Pvt. Ltd. (JV) on 04.09.2024.
- xxx. It was brought to the notice of the Court that in spite of the order directing the *status quo* to be maintained as on 03.09.2024 and the earlier order of *status quo* in Writ Petition No.5947/2024, the PWD authorities in breach of the order again opened the technical bids of the second call of tender notice No.149 for 2024-2025.
- xxxi. Again the second call of the tender notice was recalled on 09.09.2024.

- xxxii. In spite of A.G.C. Infracon Pvt. Ltd. (JV) carried out the amendment in its petition, it participated and responded to the Tender Notice No.149/2024-2025 and submitted its online bid.
- xxxiii. A.G.C. Infracon Pvt. Ltd. (JV) again moved Civil Application No.10159/2024 and were allowed to carry out amendment.
- xxxiv. It is at this stage on 18.09.2024 a statement was made by Mr. Godhamgaonkar the learned advocate for the respondent – PWD authorities, as mentioned herein above about erroneous cancellation of first call of the second tender notice No.149 for 2024-2025 and expressly mentioned that they would go ahead with its first call only.
- xxxv. The Court granted ad interim relief in terms of prayer clause ‘C’ which reads as under :

“(C) Pending hearing and till final disposal of the present Civil Application, the Hon’ble High Court may be pleased to stay the effect, implementation, operation of the Order / Notice dated 09.09.2024 passed by respondent Nos. 2 to 4 i.e. Tendering Authorities in respect of recalling the Tender Notice No.EPC-149/2024-2025 on e-procurement website (Annexure ‘Z-3’) and Order/Notice dated 09.09.2024 passed by respondent Nos. 2 to 4 i.e. Tendering Authorities in respect of issuance of 2nd call in respect of Tender Notice No. EPC-149/2024-2025 (Annexure ‘Z-4’). ”

- xxxvi. Independently, A.G.C. Infracon Pvt. Ltd. (JV) also filed Contempt Petition No.835/2024, wherein, notices are stated

to have been directed and issued to the PWD authorities.

xxxvii. A.G.C. Infracon Pvt. Ltd. (JV) filed Civil Application No.11267/2024 on 15.10.2024 and placed on record a communication received from Disciplinary Directorate, the Institute of Chartered Accountants of India (ICAI) mentioning that the certificates of the Chartered Accountant regarding turn over etc. submitted by M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) were fabricated.

xxxviii. The stand of the State and the PWD authorities in the affidavits-in-reply is to the effect that in the first and second call of the first tender Notice No.152 for 2023-2024, only one successful bidder remained in the fray, by virtue of Government Resolution dated 27.09.2018 it was imperative for them to resort to a fresh tender. It was not done designedly just to exclude M/s. A.G.C. Infracon Pvt. Ltd. (JV) or to protect M/s. J.P. Enterprises.

xxxix. It is the stand of the State and the PWD authorities that in the wake of issue being raised by naturalists expressing concern about grand old trees which would have been required to be cut at the original alignment was to be followed, the State Government had entertained and considered the grievance and with the sole objective to save the trees in some manner, it directed the alternates to be explored. This laid to

realignment with a substantial modification than the original plan and proposed construction under tender Notice No.152 for 2023-2024. That compel for realignment of a substantial nature and required floating of a fresh tender. Accordingly, the second tender Notice No.149 for 2024-2025 had to be issued.

xl. With such narration of the sequence of events we proceed to decide the matters.

4. Mr. Palodkar would take us through the papers and endeavour to point out as to how at every stage of the entire tender process, one after the other, the PWD authorities have acted arbitrarily, capriciously and in utter defiance to the directions of the Court. The basic thread of his argument is to the effect that the whole dispute started after the second call of the first tender notice No.152 for 2023-2024 was issued. He would submit that though M/s. J.P. Enterprises (JV) during the second call of the first tender notice had submitted fabricated turn over/bid capacity certificates and several works in hand were suppressed and a complaint was lodged by to the A.C.A.I. He submitted that the allegations are substantiated by the latest communication received from the I.C.A.I. produced on the record vide Civil Application No.11267/2024. He submitted that this was sufficient to black list M/s. J.P. Enterprises but to shield it, the respondent – PWD authorities intentionally disqualified M/s. J.P. Enterprises on erroneous grounds

namely; for not having similar projects and certain machinery, when both these grounds were factually incorrect, inasmuch as, it had produced the relevant papers as can be seen from page No.331,332, 335,336 and 350 as regards similar projects and at page No.410,443 and 448 as regards the machinery. He would emphasize the fact that such rejection in the second call of Notice No.152 for 2023-2024 was not challenged by M/s. J.P. Enterprises (JV), designedly and hand in gloves with the PWD authorities so that a fresh tender could be issued by taking shelter of the Government Resolution dated 27.09.2018 and which accordingly enabled the PWD authorities to issue the second tender notice No.149 for 2024-2025. He would submit that instead of black listing M/s. J.P. Enterprises it was saved by resorting to its disqualification which enabled it to participate in the second Tender Notice No.149/2024-2025.

5. Mr. Palodkar would submit that in spite of specific complaints lodged by A.G.C. Infracon Pvt. Ltd. the PWD authorities went ahead and opened financial bids, wherein, M/s. J.P. Enterprises (JV) turned out to be the lowest bidder (L1) and A.G.C. Infracon Pvt. Ltd. (JV) turned out to be second lowest bidder (L2).

6. Thus the whole thrust of Mr. Palodkar is to the effect that there was strong material to substantiate its allegations about M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) having indulged in forgery. The certificates issued by the Chartered Accountant and certified by the I.C.A.I. have been turned out to be forged one and irrespective of any

other happenings, both of them are liable to be black listed and would be out of contention irrespective of whether this Court directs any particular tender process to go on.

7. Mr. Palodkar in this regard attracted our attention to Chapter 4 of RFP which provides for procedure to be followed in case of fraud and corrupt practices. He submitted that the PWD authorities failed to take action against M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) during second call in the first tender notice. There is no response to it in the affidavit-in-reply filed by them and they need to be directed to undertake this exercise.

8. Mr. Palodkar submitted that A.G.C. Infracon Pvt. Ltd. (JV) is ready to undertake the work at the same rate as quoted by M/s. J.P. Enterprises (JV) if, as prayed for, it is black listed, without causing any burden on the public exchequer.

9. Mr. Palodkar would then submit that in fact there was no reason and justification for recalling the tender notice No.152 for 2023-2024. Only minor changes were incorporated to pretend about substantial change to justify the action of the PWD authorities in issuing the second tender notice No.149 for 2024-2025. There was no substantial change. The change could have been covered by the scope of deviation in the first tender process. There was no need to issue the fresh tender. As noticed by this Court, the entire handling of the issue by the PWD authorities demonstrates that they have least regard to the law or

authority of this Court. They have acted arbitrarily and with the sole objective of securing the interest of M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV).

10. In response to the stand taken by M/s. J.P. Enterprises in its petition Mr. Palodkar submitted that in the second tender process A.G.C. Infracon Pvt. Ltd. as a joint venture with G.N.I. Infrastructure has participated but in the first tender notice only A.G.C. Infracon Pvt. Ltd. had participated, he submitted that M/s. A.G.C. Infracon Pvt. Ltd. was a lead partner in the joint venture with GNI Infrastructure when second call of first tender notice was issued. Subsequently the partnership transformed into a Pvt. Ltd. Company and it is the A.G. Construction Pvt. Ltd. which had filed the complaint during second call of the first tender notice. He would submit that A.G.C. Infracon Pvt. Ltd. was formerly known as A.G. Constriction and in that capacity it participated as a partnership firm in the first call of the first tender notice, but thereafter participated as an incorporated company.

11. Mr. Palodkar would also repel the stand of M/s. J.P. Enterprises (JV) that there is a syndicate of contractors who all have their registered offices in Chhatrapati Sambhajnagar and they ensure that outstation contractors do not get any contract. Mr. Palodkar would submit that his client has placed on record several work orders issued in the past by the PWD authorities from Chhatrapati Sambhajnagar in favour of M/s. J.P. Enterprises. It also works as a contractor with

Chhatrapati Sambhajinagar Municipal Corporation for more than a decade.

12. Mr. Palodkar would advert our attention to the fact that even M/s. J.P. Enterprises has not endeavoured to point out that it was eligible to participate in the first tender process and still it was disqualified, to substantiate his submission that M/s. J.P. Enterprises was designedly disqualified so as to enable the PWD authorities to float a fresh tender by resorting to Government Resolution dated 27.09.2018.

13. So far as the stand of the PWD authorities and the learned advocates of the other respondents on the line that A.G. Construction Pvt. Ltd. (JV) having participated and responded to each of the tender notices/calls and therefore cannot question it, Mr. Palodkar would submit that A.G.C. Infracon Pvt. Ltd. is primarily praying for conclusion of the second call of the first tender notice in its favour by black listing M/s. J.P. Enterprises. He would submit that without there being any necessity and without there being any legally sustainable ground, instead of going ahead with the second call of the first tender notice, by pointing out some minor changes, the PWD authorities have resorted to the second tender notice. M/s. A.G. Construction Pvt. Ltd. initially challenged the second tender notice by seeking amendment and thereafter participated in the second tender notice No.149/2024-2025. He would submit that M/s. A.G.C. Infracon Pvt. Ltd. had no other option but to participate to keep its challenge alive. Without participation in the tender process, issue

regarding *locus standi* to challenge the tender process could have been raised.

14. Mr. Thigle for M/s. A.C. Shiakh Contractors submitted that it was illegally disqualified in the first tender process on two grounds which were factually not sustainable. He would submit that it was disqualified on the ground that according to SCADA guidelines the concrete batch mix plant offered by it was not located within the radius prescribed under clause 2.2.2.1(A) and that it was called upon to produce documents relating to ownership of RC and photographs and 10 numbers of mixers. He would submit that all these documents were already on the record and were part of the bid submitted by it at (**Exhibit-C**). In spite of that arbitrarily it was disqualified, even when soon after it was communicated with the decision about its disqualification on 12.06.2024, it had responded and pointed out that all these documents were part of its bid, vide communication dated 14.06.2024.

15. Mr. Thigle would further submit that though M/s. J.P. Enterprises was already disqualified, it was allowed to participate in the tender process as a joint venture which creates a serious doubt about transparency in the entire tender process undertaken by the PWD authorities. In this respect he would adopt the arguments of Mr. Palodkar to the extent of eligibility of M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) to participate in the tender process. He would also argue that all decisions have been taken by the PWD authorities with the

sole objective of somehow helping M/s. J.P. Enterprises (JV) in getting the contract.

16. Mr. Thigle again, in tune with Mr. Palodkar, would submit that just by indicating minor changes, the PWD authorities have systematically circumvented the order of this Court. He would submit that the bid submitted by A.C. Shaikh Contractors is 10% below the estimated cost and the difference between the cost offered by it and that by M/s. J.P. Enterprises (JV) is more than 11 crore and being the lowest bidder the contract ought to have been awarded to the former. He would, therefore, submit that the PWD authorities be directed to conclude the tender process pursuant to the Notice No.152/2023-2024 in its second call and to quash and set aside the Tender Notice No.149/2024-2025 (EPC).

17. Mr. Gawali for M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) would at the outset submit that the whole allegations that M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) being favoured by the PWD authorities is factually incorrect. In fact, it has turned out to be the lowest bidder in the second Tender Notice No.149/2024-2025 and is entitled to get the contract.

18. Mr. Gawali would submit that M/s. J.P. Enterprises had fulfilled condition No.2.2.2.1(b) of Section 3 in the second call of the first tender process. It had submitted relevant certificates and documents regarding completion of similar type of work during last five years in

response to the public works undertaken by Municipal Council, Udgir and Municipal Council, Washim, compositely having executed three works of the value prescribed in the tender notice. Experience certificate issued by Engineer In-charge regarding completion of ring road of Yavatmal at the cost of Rs.190.19 crore was also submitted which was a joint venture of M/s. J.P. Enterprises and Jaswant Singh Oberai Construction Pvt. Ltd. It had also deposited Rs.10 lakh for shifting of the Fully Automatic Microprocessor based PLC with SCADA enabled Concrete Batch Mix Plant (owned) in compliance with clause No.2.2.2.1(A).

19. As regards bid capacity, Mr. Gawali would submit that a certificate issued by the Chartered Accountant dated 16.10.2023 was produced, wherein, it was mentioned that it was having the bid capacity to the tune of Rs.1066.02 crore. Whereas, as per the tender condition in question, the bid capacity required was barely Rs.139.97 crore and it was having requisite bid capacity to perform the work.

20. In respect of the allegations regarding alleged fraud and fabrication Mr. Gawali would submit that the allegation about M/s. J.P. Enterprises having not disclosed four ongoing works aggregating an amount of Rs.76.73 crore, even if it was to be factored in, would still demonstrate its bid capacity to perform the work in question whose requirement was Rs.139.97 crore.

21. Mr. Gawali would then submit that in the first call of first tender notice though three entities had participated namely; M/s. J.P.

Enterprises, M/s. S.I. Yadav both were technically disqualified and only one bidder namely M/s. A.G. Constructions was technically qualified. Pursuant to the Government Resolution dated 27.09.2018 the tender process was rightly recalled on 29.02.2024. But the second call was issued on 05.03.2024 hastily and consequently there was no time for M/s. J.P. Enterprises to put up a challenge to the decision to recall the first call of the first tender notice.

22. He would submit that in the second call of the first tender notice M/s. J.P. Enterprises participated as a joint venture. M/s. A.C. Shaikh Contractors also responded and A.G.C. Infracon Pvt. Ltd. also participated. He would submit that in the second call of the first tender process A.G. Construction participated as M/s. A.G.C. Infracon Pvt. Ltd. as a joint venture with GNI infrastructure. He would submit that A.C. Shaikh Contractors was rightly disqualified on the ground of non-compliance of Clause 2.2.2.1(A) in the matter of equipment capabilities since it did not own 10 transit mixers and though it had a concrete batch mixer plant the same was not SCADA enabled and was at a distance of more than 100 kms and even, as required by the tender condition, a demand draft of Rs.10 lakh as a security for shifting the concrete batch mix plant, was also not enclosed.

23. As regards the dispute regarding certificate issued by the Chartered Accountant and submitted by M/s. J.P. Enterprises Mr. Gawali would submit that a certificate issued by Chartered Accountant Ojha and

Agrawal dated 22.03.2024 having UDIN 2417/1273/BK U8242 certifying the bid capacity of M/s. J.P. Enterprises to be Rs.970.48 crore was issued, as against the estimated cost of the work in question of Rs.139.97 crore. The certificate of the Chartered Accountant was also annexed with documents pertaining to 25 ongoing work orders.

24. Mr. Gawali would also submit that though A.G.C. Infracon Pvt. Ltd. had lodged a complaint against it with the PWD authorities on 03.06.2024 regarding lack of bid capacity and non-execution of similar type of work, the PWD authorities were having the discretion by taking recourse to Clauses 3.1.4 and 3.1.5 to ignore such deficiencies being of non-fundamental character. Accordingly the financial bids were opened and M/s. J.P. Enterprises (JV) turned out to be the (L1) bidder, whereas, A.C.C. Infracon Pvt. Ltd. (JV) was (L2) bidder. Accordingly the proposal was forwarded by the PWD authorities to the Principal Secretary of the PWD with a recommendation for issuance of work order in favour of M/s. J.P. Enterprises (JV). However, it could not be issued in view of the ad interim order passed by the this Court on 21.06.2024 in the matter of A.C. Shaikh Contractors in Writ Petition No.5947/2024.

25. Mr. Gawali submitted that there is a cartel amongst the local contractors at Chhatrapati Sambhajinagar, backed by the local MLA who had sent a letter seeking disqualification of M/s. J.P. Enterprises (JV) in tune with the complaint of A.G.C. Infracon Pvt. Ltd. He would submit that petitioner A.G.C. Infracon Pvt. Ltd. had not participated in the first

tender notice but it was A.G.C. in joint venture with GNI which had participated and the statement in the petition filed by it about having lodged complaint against M/s. J.P. Enterprises is factually incorrect.

26. Mr. Gawali would submit that the Chief Engineer of the PWD, Aurangabad with an oblique motive acted hand in gloves with A.G.C. Infracon Pvt. Ltd. and the sitting MLA addressed a letter to the Principal Secretary proposing a change in the alignment of the road from Kilometer 5.00 to 7.00 under the garb of saving old trees by pretending that the area covered by the trees should be kept at the centre in the form of divider and a service road of 5.5 mtrs width to be constructed on either side of the existing road. As regards the remaining 6 kms of the proposed road it was also suggested for replanting the old trees. He would submit that by communication dated 13.08.2024 the Principal Secretary gave an approval to a plan suggested by the Chief Engineer of the PWD, Chhatrapati Sambhajinagar and accepted the proposal for publishing a fresh tender with a reduced period for completing the tender process within 15 days. On 16.08.2024 the Chief Engineer PWD, Chhatrapati Sambhajinagar granted sanction to recall the first tender notice No.152 for 2023-2024 due to such deviation in the alignment. Accordingly E-Tender Notice No.149/2024-2025 was published on 19.08.2024, only to ensure that M/s. J.P. Enterprises should not get the work order.

27. He would submit that with an oblique intention a tender condition was incorporated to designedly disqualify M/s. J.P. Enterprises

(JV) by introducing requirement of having experience in transplanting fully grown trees which are to be affected between Kilometer 5.00 and 7.00. Again A.G.C. Infracon Pvt. Ltd. in joint venture with GNI Infrastructure Pvt. Ltd. participated in the second call of second tender process and it is thereafter that this Court issued contempt notices against the PWD authorities.

28. Mr. Gawali would then submit that by filing Writ Petition No.7704/2024 , A.G.C. Infracon Pvt. Ltd. could get the order of the Court to maintain *status quo* in respect of the fresh Tender Notice No.149 till the next date. However, after obtaining the stay order, it (A.G.C. Infracon Pvt. Ltd.) responded to and participated in the tender Notice No.149. He would submit that undermining the order of the Court dated 18.09.2024 the PWD authorities recalled the first call of the second tender process and issued a second call where the last date for submission of bid was 17.09.2024 and the bids were to be opened on 19.09.2024.

29. Mr. Gawali would lastly, submit that the circumstances are writ large and point out collusion between A.G.C. Infracon Pvt. Ltd. and the PWD authorities at the behest of the sitting MLA and their concerted effort in somehow excluding participation of M/s. J.P. Enterprises and M/s. J.P. Enterprises (JV) from the tender process. He would submit that having been found to be (L1) bidder in the second call of the first Tender Notice No.152/2023-2024, M/s. J.P. Enterprises deserves to be issued with work order.

30. Mr. Godhamgaonkar the special counsel engaged by the PWD authorities would reiterate the aforementioned facts and circumstances and would deny about they having acted arbitrarily or are favouring any of the petitioners/bidders. He also denied about having acted at the behest of the sitting MLA. He would justify the decisions of the PWD authorities in disqualifying A.C. Shaikh Contractors in the second bid of the first tender process. He also denied about wrongly disqualifying M/s. J.P. Enterprises just to enable them to recall second call of the first tender process and to go for second Tender Notice No.149/2024-2025.

31. He submitted that on opening of financial bids in the second call of tender Notice No.152 for 2023-2024, M/s. J.P. Enterprises was turned out to be (L1) bidder. It was forwarded to the State Government for acceptance of the bid to enable issuance of the work order. However, some tree lovers approached the government and raised issue regarding many old trees likely to be affected during the construction of the proposed road. All such trees are more than 100 year old spread throughout the stretch of the road to be constructed. The government asked the Chief Engineer of the PWD, Chhatrapati Sambhajnagar to undertake a survey and to submit a report. Thereafter the State Government issued directions for issuing fresh tender. Accordingly Chief Engineer, PWD, Chhatrapati Sambhajnagar gave revised technical sanction and the earlier tender process was required to be recalled. He would thus submit that in view of such supervening events, since all the three petitions were

filed prior to such event, have become infructuous. It is only pursuant to the amendments which were permitted by the Court thereafter that the three writ petitions still survive. He would, therefore, submit that since the earlier tender process was required to be recalled pursuant to a policy decision emanating from the State Government, the PWD authorities at Chhatrapati Sambhajinagar cannot be attributed with *mala fides* or arbitrariness.

32. Mr. Godhamgaonkar would then submit that there was no intention muchless defiance on the part of the PWD authorities who were bound to obey the instructions from the State Government. The change in the policy pursuant to the issue regarding existing trees could not have been comprehended. Somehow the issue had reached the State Government requiring recalling of the earlier tender process and realignment of the entire stretch of the road. It was merely a consequence and was not intended to adversely affect any of the bidders.

33. Mr. Godhamgaonkar would submit that though this Court had directed *status quo* to be maintained, the decision to recall the tender process was not designed to circumvent the order of the Court.

34. However, Mr. Godhamgaonkar would fairly concede that due to mistake on the part of employees in the office of the PWD authorities and due to general transfers of the staff member, erroneously the first call of the second Tender Notice No.149/2024-2025 was recalled. After realizing it a statement was made in the open Court by him that the

authorities would go ahead with the Tender Notice No.149/2024-2025.

35. He would submit that in response to Tender Notice No.149/2024-2025 only A.G.C. Infracon Pvt. Ltd. participated and pursuant to the Government Resolution dated 27.09.2018 a second call was required to be issued. No fresh tender was floated. In conclusion he would submit that the petitioners have no right to put up a challenge to such decisions of the PWD authorities and the State Government, taken from time to time in view of the change of the entire project. The earlier project has become non-existent and cannot be taken forward. The work cannot be completed now with the change in the alignment further requiring re-plantation of some trees from a portion of the stretch of the road. He would then cite following decisions to buttress his submission that the tender jurisprudence has settled down and the power of an employer to under take the work is a paramount consideration :

- a) **TATA Cellular Vs. Union of India ; AIR 1996 SC 11**
- b) **Shri Ganesh Enterprises and Anr. Vs. CIDCO ; 2024 (6) Mh.L.J. 607**
- c) **Silppi Constructions Contractors Vs. Union of India and Anr; (2020) 16 SCC 489**
- d) **Caretel Infotech Ltd. Vs. Hindustan Petroleum Corp. Ltd. and Ors. (2019) 14 SCC 81**

36. One need not delve deep to understand the scope and ambit of judicial review in the tender matters. Even some unreasonableness and illegalities need to be ignored as laid down in the matter of **Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST); 2023 SCC OnLine SC 671**. Arbitrariness *per se* without any

intention to entertain any bias and without there being strong material to attribute *mala fides* cannot be interfered with.

37. After taking a walk through the checkered history and after considering the submissions of the learned advocates on the lines of their pleadings, in our considered view, it would be appropriate to cull down some facts and the sequence of events to facilitate adjudication of the conflicting rights of all the three bidders as also that of the State in the form of PWD authorities' right as an employer to undertake the public work through tender processes.

38. It is necessary to note that when Tender Notice No.152/2023-2024 was published on 08.12.2023, only three bidders namely; S.I. Yadav, M/s. J.P. Enterprises and A.G. Construction had participated. On the technical scrutiny only A.G. Constrictions was held to be technically qualified. The Government Resolution in the Department of Public Works dated 27.09.2018 provides that in case of public works being undertaken if there remains only one qualified bidder, a second call has to be published so that some more bidders can participate.

39. The A.G.C. Infracon Pvt. Ltd. as a joint venture with G.N.I. Infra. Pvt. Ltd. participated in the second call of the second Tender Notice No.149/2024-2025. It filed Writ Petition No.7704/2024 on 20.07.2024, alleging that in light of the alleged fraud perpetrated by M/s. J.P. Enterprises which had participated in the second call as M/s. J.P.

Enterprises (JV), the PWD authorities instead of blacklisting it, opened the financial bids and M/s. J.P. Enterprises (JV) was found to be the (L1), whereas, the A.G.C. Infracon Pvt. Ltd. (JV) turned out to be the (L2) bidder and prays that M/s. J.P. Enterprises (JV) be declared as disqualified and being the (L2) bidder it shall be directed to be the successful bidder.

40. Though at the first blush such a stand of A.G.C. Infracon Pvt. Ltd. (JV) seems to be attractive, its hollowness comes to the fore if one looks deep. A.G.C. Infracon Pvt. Ltd. (JV) does not expressly come with a stand that M/s. A.C. Shaikh Contractors who filed Writ Petition No.5947/2024 and who was one of the three participants in the second call of the first Tender Notice No.152/2023-2024 was also qualified but was illegally disqualified. Needless to state that if there were three participants and two of them namely; M/s. J.P. Enterprises (JV) and M/s. A.C. Shaikh Contractors were disqualified, only A.G.C. Infracon Pvt. Ltd. (JV) would remain in the fray and it was imperative in the light of the Government Resolution dated 27.09.2018 for the PWD authorities to go for a fresh tender process, which they did, in the form of publication of Tender Notice No.149/2024-2025.

41. In this regard it is necessary to note that A.C. Shaikh Contractors filed the writ petition which is the first out of these three writ petitions, on 15.06.2024. It was filed initially even without arraying the other two bidders namely; A.G.C. Infracon Pvt. Ltd. and M/s. J.P.

Enterprises (JV). In the first order dated 21.06.2024 while directing the notices to be issued, simultaneously, a direction was issued to add both of them as respondents. This circumstance, in our considered view, lends credence to the stand of M/s. J.P. Enterprises (JV) and supports the submission of Mr. Gawali that there is room to believe that A.G.C. Infracon Pvt. Ltd. (JV) does not seem to be as plain and transparent as it pretends to be and there is reason to believe that it has been acting hand in gloves with M/s. A.C. Shaikh Contractors.

42. There is one more reason to lend credence to our such inference. In spite of the aforementioned sequence of events, though A.G.C. Infracon Pvt. Ltd. filed the writ petition on 20.07.2024, Tender Notice No.149/2024-2025 was published on 19.08.2024. The last date of submission of the bids was 03.09.2024 and the technical bids were to be opened on 05.09.2024. In response there to, only M/s. A.G. Construction (JV) responded and being the single bidder in the fray, again a second call was required to be issued and was indeed issued on 19.09.2024 referring to and relying upon the Government Resolution dated 27.09.2018. A.G.C. Infracon Pvt. Ltd. filed the Writ Petition No.7704/2024 on 20.07.2024 and simultaneously, it participated and responded to the Tender Notice No.149/2024-2025 by submitting its bid without demur.

43. Though it is now being submitted by Mr. Palodkar that it had no option but to participate and respond to the second Tender Notice

No.149/2024-2025, in our considered view, as has been noted by us in the order dated 22.08.2024 in Writ Petition No.7704/2024 and Writ Petition No.5947/2024 passed in common, that it was unbecoming for the PWD authorities to float a fresh tender in the form of Tender Notice No.149/2024-2025 and for disobedience of the order, it was directed that no work order shall be issued. If the PWD authorities were already directed not to issue the work order, while A.G.C. Infracon Pvt. Ltd. was already before this Court, there was no reason for it to have participated and responded to the Tender Notice No.149/2024-2025, more so when it was already seeking the prayer for finalization of the second call of the first Tender Notice No.152/2023-2024, wherein, it was found to be (L2) bidder and was not questioning disqualification of A.C. Shaikh Contractors and was merely seeking disqualification of M/s.J.P Enterprises (JV). This circumstance, in our considered view, again buttresses our inference that A.G.C. Infracon (JV) does not seem to be acting *bona fide*.

44. One more aspect that needs to be emphasized in this regard is the fact that in spite of all such supervening events, post filing of Writ Petition No.5947/2024 on 15.06.2024, M/s. A.C. Shaikh Contractors neither participated and responded to the second Tender Notice No.149/2024-2025 either in the first call or the second call nor did it seek to make any amendment in its petition, till it did so on 22.08.2024. In fact, by an elaborate order passed on 22.08.2024 observing as to how

the PWD authorities were in breach of the order of this Court, on the request being made by Mr. Thigle on behalf of M/s. A.C. Shaikh Contractors, leave was granted to amend the petition and to bring on record such supervening events. In spite of such order M/s. A.C. Shaikh Contractors did not carry out any amendment even when M/s. A.G.C. Infracon Pvt. Ltd. (JV) carried out a similar amendment promptly, and even when M/s. J.P. Enterprises filed petition on 03.09.2024 and additional amended was also allowed to be carried out by the order dated 02.09.2024.

45. It is at that belated stage that M/s. A.C. Shaikh Contractors chose to amend the petition and sought to take exception to the E-Tender Notice No.149/2024-2025. Both, M/s. A.C. Shaikh Contractors as also A.G.C. Infracon Pvt. Ltd. (JV) seek to challenge the second Tender Notice No.149/2024-2025. But as is pointed out earlier, M/s. A.C. Shaikh Contractors did not either seek to enforce the order of *status quo* nor did it respond to the second Tender Notice No.149-2024-2025 and only A.G.C. Infracon Pvt. Ltd. (JV) submitted its bid and being the lone bidder in the fray even that first call was cancelled.

46. These circumstances would indicate that M/s. A.C. Shaikh Contractors was not keen in prosecuting its cause and allowed the things to move in spite of having obtained the order of *status quo* and even made an attempt to stall the process without arraying the other bidders and in spite of knowing that even if it was a breach of the order of the

Court that PWD authorities had gone ahead and published Tender Notice No.149/2024-2025. It did not promptly object to even participation of A.G.C. Infracon Pvt. Ltd. (JV) in the second tender process. To repeat, if these circumstances are looked into, coupled with the fact, as mentioned herein above, that in Writ Petition No.7704/2024 A.G.C. Infracon Pvt. Ltd. avoided to question disqualification of M/s.A.C. Shaikh Contractors, are the circumstances to look upon their conduct with a pinch of salt.

47. This takes us to the aspect regarding the stand being taken by the PWD authorities. Irrespective of the submissions of learned advocates of all the three bidders, wherein, they seem to be unanimous, admittedly, after publication of the first Tender Notice No.152/2023-2024, as is the stand of the PWD authorities, the issue regarding saving the 100 year old trees on the stretch of the road whose construction has to be undertaken, was raked up by some nature lovers and the issue had reached up to the State Government. Exploring eventualities of going ahead with the proposal by cutting all the trees and only concretizing existing asphalted road without cutting the trees, both of which were found to be not feasible, that the third option was decided to be explored, of concretizing the existing road without a divider and saving the trees on either side of the road by providing a concretized service road. It is the stand of the PWD authorities that this led to substantial change in the alignment of the road and even resulted in change in the nature of the work to be performed by the contractors. Even it has become imperative

to replant some of the trees. All such circumstances and the stand of the PWD authorities in their affidavit-in-reply has gone without a demur. There is no concrete material or stand of the petitioners to question this reason for the PWD authorities to float second Tender Notice No.149/2024-2025.

48. One need not overemphasize the authority of an employer in the tender jurisprudence, which has been reiterated by the Supreme Court in the matter of **TATA Cellular** (supra), **Silppi Constructions** (supra), **Jagdish Mandal Vs. State of Orissa and Ors.**; (2007) 14 Supreme Court Cases 517 and the latest being **TATA Motors** (supra). It is trite that the employer has the discretion to decide as to how it intends to undertake construction of a public project. The High Court in exercise of the powers under Article 226 of the Constitution of India has limitation to prevail over such discretion vesting with the employers. The question of feasibility, propriety, correctness are the aspects which this Court cannot undertake and scrutinize.

49. If the first tender process merely expected the contractors to carryout construction of a concretized four lane road with a divider and without there being any whisper about cutting/transplantation of the trees obstructing such construction or otherwise, no fault can be found with the decision of the PWD authorities and the State Government to go for the second Tender Notice with a change in alignment and prescribing stipulations therefore.

50. Therefore, though there is some room still to attribute the PWD authorities with haphazardness to the extent they resorted to such issuance of a second Tender Notice No.149/2024-2025 in the light of fact that there was already an order of *status quo*, the aforementioned aspects compelling the PWD authorities and the State Government for recalling the first Tender Notice No.152/2023-2024 and for going for the second Tender Notice No.149/2024-2025, cannot be said to be arbitrary or unreasonable, muchless illegal.

51. The stand of the PWD authorities that only A.G.C. Infracon Pvt. Ltd. (JV) participated in the first call of second Tender Notice No.149/2024-2025 and by resorting to Government Resolution dated 27.09.2018 they had decided to go for a second call has not been controverted by any of the three petitioners.

52. Endeavour was made by Mr. Palodkar as also Mr. Gawali to strenuously submit that in the first Tender Notice No.152/2023-2024 there was a scope for some deviation and even this aspect of saving the trees could have been covered by such scope for the deviation and there was no need for the PWD authorities to float a fresh tender when all the three bidders who filed the petitions, had placed their respective bids and with their consensus the authorities could have resorted to such deviation. In our considered view, again, it would be for the PWD authorities and the State being the employers, to decide as to in what manner the public work can be undertaken. Whether they could have

resorted to a fresh tender process or could have simply made an endeavour to bring about consensus amongst the bidders, regarding such deviation, in our considered view, in the peculiar facts and circumstances discussed herein above, cannot be a subject matter of judicial review. There is nothing to attribute the PWD authorities with any *mala fides albeit* something can be said about their conduct in dealing with the entire subject in a haphazard manner in the light of the order of *status quo* passed by this Court and still they going ahead with the process. Consequently, with such substantial change in the project, no fault can be found with the PWD authorities and the State in deciding to go ahead with the fresh tender process by cancelling the first tender process namely Tender Notice No.152/2023-2024.

53. This puts at rest all the controversy to the extent that petitioner M/s. A.C. Shaikh Contractors which is seeking quashment of the Tender Notice No.149/2024-2025 and questioning its disqualification in the second call of the Tender Notice No.152/2023-2024. Same would be the case in respect of the petition of A.G.C. Infracon Pvt. Ltd. (JV) which again is seeking disqualification of M/s. J.P. Enterprises (JV) and seeking the contract to be awarded to it being (L1) bidder in the second call of the first tender process namely Tender Notice No.152/2023-2024. Again, as regards the writ petition of M/s. J.P. Enterprises (JV), which is again questioning its disqualification in the second call of the first Tender Notice No.152/2023-2024 and soliciting writ of mandamus directing the

PWD authorities to award the work pursuant thereto to it and also praying for quashment of its second E-tender Notice No.149/2024-2025, would not survive once it is found that there is no illegality in the decision of the State and the PWD authorities in resorting to a fresh tender notice in the form of Tender Notice No.149/2024-2025 due to the change in the alignment and nature of the public work to be performed being found to be beyond the scope of judicial review. Consequently, all the three petitions are liable to be dismissed.

54. As regards the contempt proceedings are concerned we leave that aspect to be considered by the appropriate bench dealing with such matters according to the roster.

55. In the light of above, all the three writ petitions are dismissed. Rule is discharged. Pending civil applications are disposed of.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

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