



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

911 WRIT PETITION NO. 13010 OF 2025

M/s A. K. Construction Through It's Partner Sayyed Khayyum
Amirsahb

VERSUS

The State Of Maharashtra Through The Secretary And Others.

...

WITH

CIVIL APPLICATION NO. 12394 OF 2025 IN WP/13010/2025

M/s A. K. Construction Thr It's Partner Sayyed Khayyum
Amirsahb

VERSUS

The State Of Maharashtra Through The Secretary And Others

...

Mr. N.V. Dhoke h/f Ms. V.T. Karwade, advocate for Petitioner.

Ms. S.S. Joshi, AGP for Respondent State.

...

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

Dated : November 14, 2025

...

FINAL ORDER :- (Per Hiten S. Venegavkar, J.)

1. Heard.

2. With the consent of both the parties the petition is taken up for final hearing at the stage of admission.

3. The petition is filed under Article 226 of the Constitution of India, by a partnership firm challenging it's disqualification in the Technical Bid stage of an E-Tender

Floated by the Latur City Municipal Corporation for construction of a Two Bay New Fire Station with an Administrative Office. The petitioner seeks a direction to the Respondent/Corporation to hold it technically qualified and to permit it to participate in the financial bid. The petitioner asserts that it is a recognized registered contractor and had complied with every requirement stipulated in clause-3 of the Tender Document. It contends that having submitted all requisite documents on 17.9.2025, well before the dead-line of 18.9.2025, it's technical bid could not have rejected on the ground of insufficiency of documents. According to the petitioner, the action of the Corporation is arbitrary, discriminatory and in violation of certain Government Resolutions of 2018 and 2019, which according to the petitioner, requires the Tendering Authority to issue a notice and grant an opportunity to cure deficiencies in the interest of competition. The petitioner further alleges unequal treatment by pointing out that another bidder by name Tech. Drive Engineering Pvt. Limited was issued a notice and permitted to file additional documents, whereas, no such opportunity was extended to the petitioner.

4. The petitioner relies upon Government Resolutions dated 29.4.2025 and 27.9.2018 to contend that the Public Works Department Tender Book and the Procedural Safeguards therein were required to be adopted by all Municipal Corporations. It is argued that the decision of rejection was taken behind the petitioner's back without uploading a checklist or specifying the exact deficiencies, thereby giving rise to an apprehension that the process was coloured by malafides and favoritism. It is also urged that the petitioner, having fulfilled all financial and technical eligibility criteria, was entitled at least to a notice prior to rejection of the bid and the denial of such opportunity violates the principles of natural justice.

5. During the hearing the learned advocate for the petitioner relied upon clause-3 of the tender document and invited the Courts attention to various documents annexed to the Civil Application filed subsequently. He attempted to demonstrate that every document required in "Envelope no.1" had been duly submitted. He emphasized that the respondents, being State Authorities are bound to act fairly and to afford reasonable opportunity before taking any decision

adverse to a bidder and, therefore, the rejection without issuing a clarification notice is unlawful. He maintained that the Government Resolutions obligating the authorities to call for explanation in case of deficiencies form part of the tendering discipline and that the respondents acted in derogation thereof.

6. The learned Assistant Government pleader appearing for the State opposed the petition and supported the rejection of the technical bid. It was submitted that the Government Resolutions relied upon by the petitioner pertain to the Public Works Department and cannot automatically govern the tendering process of an urban local body unless expressly adopted. According to the State, even assuming the Government resolutions were to be considered as guiding norms, they do not mandate a personal hearing or a right to rectify deficiencies at the technical bids stage, at the highest they require the reasons for rejection to be made available. The A.G.P submitted that petitioner had failed to produce documents of the nature and form mandated specifically by clause-3 and clause-F of the tender conditions and that the Scrutiny Committee rightly disqualified the petitioner. It was

argued that judicial review in tender matters is extremely limited and that the Court cannot intervene merely because another view is possible.

7. Having heard the learned advocates at some length and having perused the original documents placed before us by the petitioner along with the Civil application, we undertook a detail scrutiny. The petitioner's list of similar works, has reflected in statement no.1, comprises construction of buildings, administrative blocks and other Civil works, however, none of these projects relate even remotely to the construction or development of a 2 bay fire station, which is the very nature of work in the present tender. The eligibility criteria expressly require prior execution of similar nature projects. The absence of such experience is not a mere curable defect but a substantive deficiency that goes to the root of technical qualification.

8. On further scrutiny, several agreements were found executed by the petitioner with third party contractors for execution of works awarded to it. When queried, counsel for the petitioner submitted that such arrangements were made post award of contracts as the petitioner outsources certain

tasks. However, clause 2 of the tender document expressly prohibited joint ventures and memorandum of understanding with third parties. The presence of such agreements, coupled with the explanation offered, raises a genuine concern as to whether the petitioner independently possess the capability to execute the tender work. This again is not a deficiency that can be cured by furnishing additional documents.

9. A more serious deficiency emerges from clause 'F' at page 37 of the tender contract annexed in civil application, which mandates that certificates prescribed under clause qualification criteria (serial no.A to C) and machinery related certification (serial no.D) must be issued by an Officer not below the rank of Commissioner or Divisional Accounts Officer ,and that the copy of these certificates must be duly attested by a Gazetted Officer. On the petitioner's own showing the certificates placed at page no.261 to 263 are issued and certified solely by a Chartered Accountant. When confronted, counsel for the petitioner fairly considered that these were indeed the very documents submitted with Bid. The complete absence of certification by the Competent Officer and the total absence of attestation by any Gazetted Officer

constitute clear non-compliance with a mandatory condition. These requirements are not mere matters of form but substantive safeguards intended to ensure that machinery, financial soundness and technical capabilities are properly authenticated by public authorities.

10. In light of these glaring deficiencies, it is wholly untenable for the petitioner to contend that a notice ought to have been issued to rectify the documents. The law is well settled that a tendering authority is not obliged to permit rectification of substantive deficiencies. The Supreme Court in **Afcons Infrastructure Ltd Vs. Nagpur Metro Rail Corporation Ltd. & Anr** reported in (2016) 16 SCC 8118, **Central Coalfields Limited & Anr. Vs SLL - SML (Joint Venture Consortium) & Ors** reported in (2016) 8 SCC 622 and **Maa Binda Express Carrier And Anr vs Northeast Frontier Railway And Ors.** reported in (2014) 3 SCC 760 has made it abundantly clear that tender conditions must be strictly construed and that Courts cannot rewrite tender terms or compel authorities to relax mandatory requirements. The doctrine of fairness does not extend to permitting a Bidder to cure fundamental defects or bypass eligibility conditions. Further in **M/s. Galaxy Transport Agencies, Contractors, Traders, Vs. M/s New J.K. Roadways,**

Fleet Owners And others reported in (2021) 16 SCC 808, the Supreme Court reiterated that judicial review in such matters is confined to examining arbitrariness, malafides and perversity and that Courts must refrain from interfering in technical assessment carried out by the tender Scrutiny Committee.

11. Tested against these principles, the petitioner has failed to make out any case. The deficiencies in the petitioner's technical Bid pertain to essential eligibility criteria and mandatory documents. These are not curable defects. Even assuming for the sake of argument that the guide-lines relied upon by the petitioner could be invoked, they cannot overwrite explicit tender conditions. Moreover, where the defects go to the root of eligibility, issuance of notice would have served no purpose. In such circumstances, the plea of violation of natural justice is ill-founded. Natural justice cannot be invoked to resurrect an otherwise ineligible bid. The allegation that another bidder was issued a notice does not advance the petitioner's case as the nature of deficiencies, if any, in that bidder's documents has not been shown to be comparable or equivalent to the petitioner's non-compliance.

12. We thus find no element of arbitrariness, malafides or irrationality in the decision of the Respondent/Corporation. The Scrutiny Committee acted strictly within the four corners of tender document. Judicial review cannot be converted into an appellate re-evaluation of technical finding. The petitioner having failed to satisfy mandatory criteria cannot seek a writ compelling the Corporation to treat an invalid bid as valid. For all the above reasons, the petition is devoid of merits. The challenge to the rejection of the technical bid fails. The Writ Petition is accordingly **dismissed**. There shall be no order as to costs.

13. In view of dismissal of writ petition, pending Civil Application also stands **disposed off**.

(HITEN S. VENEGAVKAR, J.) (SMT. VIBHA KANKANWADI, J.)

AAA/-

....