

WRIT PETITION NO. 11111 OF 2025

Versus;

-

.....

1 of 13

JUDGMENT (Per M.S. Karnik, J.)

1. The challenge in this petition under Article 226 of the Constitution of India is to the tender condition no.10 of the subject e-tender issued for proposed construction of administrative building of the respondent no.2 – The Chief Officer, Sangola Municipal Council, Tal. Sangola, Dist. Solapur (‘Municipal Council’, for short). It is petitioner’s case that by incorporating the impugned tender condition, the petitioner stands *ipso facto* deprived from participating in tender process.

2. The facts of the case in brief need to be stated. The petitioner is a proprietary concern engaged in the business of construction activities. The notice inviting e-tender dated 22nd August 2025 for proposed construction of Administrative Building of Municipal Council was issued for an estimated cost of Rs. 11,99,31,294/-. Clause 10 of the tender condition prescribed the minimum executed quantity required, which reads thus :-

10.	<i>Bidder must produce scanned copy of quantity certificate of following item of works Executed in any one year (in last five year). The quantity certificate must be duly signed by competent authority with whom bidder has executed the work.</i>			
	<i>Sr. no.</i>	<i>Item of work</i>	<i>QTY</i>	<i>UNIT</i>
1.		<i>RCC work in M-25 grade & above</i>	<i>4500</i>	<i>Cubic meter</i>
2		<i>T.M.T. Reinforcements Fe 500 grade</i>	<i>500</i>	<i>Metric Tonne</i>

3. Mr. Rushabh Seth, learned Counsel for the petitioner submitted that the tender conditions are excessive and arbitrary. It is submitted that the tender stipulates actual work quantity as 2,411.22 cubic meter of M-25 grade concrete and 287.20 mt of reinforcement steel, which are much smaller. It is submitted that the petitioner falls short of the Pre-Qualification (PQ) threshold even though the petitioner has relevant experience and otherwise satisfies the financial and technical criteria. Learned Counsel for petitioner relied upon the Circular dated 27th September 2018 issued by PWD, which expressly sets out standardized relaxed thresholds for “minimum executed quantity”, which reads thus:-

“(i) For works costing Rs. 1 crore to Rs. 10 crore – 30% of the contract value;

(ii) For works costing above Rs.10 crore – 60% of the contract value (as applicable to pre-qualification of bidders).”

4. It is submitted that the Circular was issued to harmonise Pre-Qualification criteria and to avoid unduly restrictive / arbitrary conditions. It is then submitted that the State had issued Revised Notice in accordance with the Central Vigilance Commission Guidelines, regarding E-tendering process on 25th October 2019. In the said Revised Notice, PWD reiterated the Pre-Qualification criteria. It is submitted

that the justification of the Municipal Council insofar as to the query raised by the petitioner is unreasonable as the Government Resolution already balances capacity with fairness by stipulating the 60% rule. It is submitted that the impugned Pre-Qualification condition is arbitrary, disproportionate and inconsistent with the State PWD Circular and against the principle of non-discrimination and fair competition. Learned counsel urged that the petitioner has executed works satisfying the 60% threshold but is excluded by the tender's unilateral and unjustified magnification of Pre-Qualification quantities.

5. The petitioner has relied upon the decision of this Court in the case of *M/s. Watergrace Products Vs. Nashik Municipal Corporation & Ors.* in Writ Petition no. 701 of 2025, dated 20th February 2025 in support of his submissions.

6. On the other hand, Mr. Akshay Patil, learned Counsel appearing for the respondent – Municipal Council raised an objection to the maintainability of the petition. It is submitted that the petitioner has not participated in the tender process and hence he cannot be allowed to make a grievance about the tender condition. It is further submitted that the Municipal Council has provided a justification as to why the

condition was necessary to be incorporated. It is submitted that the Government Resolutions relied upon by the petitioner are in the nature of guidelines and not binding on the Municipal Council. Learned Counsel for the respondent no.2 has relied upon the following decisions in respect of his submissions :-

(i) National Highways Authority of India Vs. Gwalior-Jhansi Expressway Limited (2018) 8 SCC 243.

(ii) Rosmerta Technologies Ltd. Vs. State of Maharashtra, through Principal Secretary & Anr. in Writ Petition no. 6750 of 2022, dated 20th September 2022.

(iii) Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and Ors. (2023) 19 SCC 1.

7. We have given our anxious consideration to the rival contentions advanced by learned Counsel. We have perused the memo of the petition, the affidavit-in-reply and the materials relied on by the learned counsel. The Municipal Council issued a tender Notice on 21st August 2025 with a stipulated completion period of 24 months. Though the tender terms contemplate that the construction work is to be completed within a period of 24 months, the Municipal Council intends, in the larger public

interest, to ensure completion within 6 months. This is necessitated by the fact that the existing building has already been demolished and presently there is no functioning General Body Hall available for the Municipal Council. It is the stand of the Municipal Council that with the upcoming elections, the requirement of a properly constructed General Body Hall assumes urgency and priority. The aforesaid objective, according to the Municipal Council, underlines the need for capable and experienced contractors who can mobilize resources efficiently and deliver the project within the shortened time frame.

8. The petitioner participated in the Pre-Bid Meeting held on 26th August 2025. In the query raised by the petitioner the following is the clarification dated 26th August 2025 of the Municipal Council :-

3	<i>Why are the executed quantities mentioned in the PQ criteria higher than the actual tender quantities ?</i>	<i>The PQ criteria have been framed considering the criticality of the project timeline. Although the tendered quantities are 2,411.22 Cum of M-25 grade concrete and 287.20 MT of reinforcement steel, the RCC structure is required to be completed within a strict period of six months, as the new General Body Hall is needed on priority due to the upcoming elections. To ensure timely and quality execution, it is essential to engage a contractor with a proven track record of handling projects of a larger scale. Accordingly, the PQ quantities have been set at nearly twice the tendered quantities (4,500 Cum of RCC and 500 MT of steel) to assess the bidder's demonstrated capability of executing such works within a single year. This approach ensures that only experienced</i>
---	--	--

		<i>and capable contractors participate, thereby safeguarding the timely completion of the project.</i>
--	--	--

9. Post this clarification, the petitioner failed to submit its bid within the stipulated dead line on 31st August 2025. On 31st August 2025, a collective representation signed by 18 contractors, including the petitioner, was received by the Municipal Council. The representation was submitted to the Municipal Council one day before the deadline for submitting the bids by the bidder. The contractors alleged that the tender was arbitrary and designed to favour certain contractors. The Municipal Council considered the representation in the interest of transparency and issued a detailed reply on 1st September 2025, calling upon the signatories to furnish documentary proof of having executed at least 80% of similar nature of works as contemplated in the tender. The Municipal Council made it clear that failure to produce such evidence would establish that the representation was frivolous and intended solely to delay the tender process. Apart from attending the Pre-Bid Meeting, the petitioner did not submit any bid pursuant to the tender and despite opportunity, which was given by the Municipal Council to furnish documentary proof of having executed at least 80% of similar nature of work as contemplated in the tender. The petitioner though attended the

Pre-Bid Meeting on 21st August 2025 but refrained from submitting a bid, fully aware of the eligibility conditions prescribed in clause 10. Moreover, the petitioner has failed to produce any proof of 80% completion of similar works though an opportunity to that effect was given by the Municipal Council vide their reply dated 1st September 2025 to the representation preferred by 18 contractors, including the petitioner.

10. The Hon'ble Supreme Court in *National Highways Authority of India* (supra) held that the entity who chose to stay away from the tender process cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. The petitioner though attended the Pre-Bid Meeting and was given an opportunity by the Municipal Council vide its reply dated 1st September 2025 calling upon the signatories to submit proof of 80% completion of work, did not produce any such proof and, therefore, the petitioner is not justified in making a grievance to the tender condition after the last date to submit the tender bid i.e. 1st September 2025. The present petition is filed on 2nd September 2025 on which day the technical bid was opened. We are, therefore, not inclined to entertain the Writ Petition on this count alone.

However, we proceed to examine the petitioner's contentions on merits.

11. No doubt, the tender condition incorporated is not in consonance with the guidelines issued by the PWD. If the Municipal Council has a good justification to prescribe higher eligibility criteria proportionate to the skill and complexity of the project, will the Municipal Council be precluded from doing so is the question before us. It is well settled that the Authority floating the tender is the best judge of its requirement and judicial interference is warranted only if mala fides, arbitrariness or discrimination is demonstrated. Reliance by the learned Counsel for the petitioner on the decision of this Court in *M/s. Watergrace Products* (supra) is completely misplaced. *M/s. Watergrace Products* (supra) is a case where the requirement of experience of three years was reduced to one year, which this Court found it to be arbitrary. Thus, the decision in *M/s. Watergrace Products* (supra) is distinguishable on facts. In the present case, a higher threshold is prescribed than what is prescribed by the guidelines. Let us see the justification.

12. The justification by the Municipal Council for imposing the stringent conditions in the nature of impugned clause 10 is that the same is based on the size, complexity and nature of the project. It is the

contention of the Municipal Council that the eligibility standards were framed in good faith, in larger public interest and in accordance with the established norms and considering the urgency and requirements of the Municipal Council. It is the stand of the Municipal Council that it is committed to expediting the work without compromising on quality or compliance with contractual safeguards. It is submitted that the eligibility norms prescribed in clause 10 including the minimum executed quantities and requirement of specified plant and machinery, are rationally connected to the urgency and importance of the project.

13. The Municipal Council has further submitted that the petitioner's past performance in works awarded by the Municipal Council raises a doubt as to its capacity in completing the work in time bound projects. The petitioner has in the past demonstrated its inability to mobilize resources and adhere to timeline. To avoid defaults on the part of the contractors and ensure that only competent contractors could participate, the Municipal Council inserted such pre-qualification condition for providing minimum executed quantity in the past as enunciated in clause 10. This condition ensures that the participating contractors are capable and have adequate experience and resources to efficiently complete the work. The stricter pre-qualification conditions are designed to safeguard

public interest and ensure the timely completion of the Administrative Building project, which is of utmost priority. We do not find this approach of the Municipal Council arbitrary, unreasonable or against public interest.

14. The scope of judicial review in Government contracts and tenders is well settled. The Hon'ble Supreme Court in *Tata Motors Limited* (supra) has observed that the Court should not ordinarily interfere in the matters relating to tender of contract. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

15. This court in *Rosmerta Technologies Ltd.* (supra) relying on the observations in *National High Speed Rail Corporation Ltd. Vs. Montecarlo Limited, (2022) 6 SCC 401*, held that before interference in exercise of

judicial review powers in a matter relating to award of a contract, the following questions have to be posed:

- “(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the Court can say: ‘the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached? And
(ii) Whether the public interest is affected?”*

The Court reminded that should the answers to the above questions be in the negative, then there should be no interference under Article 226.”

16. It is well settled that this Court is normally loathe to interfere in contractual matters unless a clear cut case of arbitrariness or mala fides or bias or irrationality is made out. The Hon’ble Supreme Court observed that the courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges’ robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The essence of the law laid down by the Hon’ble Supreme Court is the exercise of restraint and caution, the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts

unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal.

17. In the present facts, taking overall view of the matter, it is not possible for us to come to the conclusion that the tender condition impugned is unreasonable or arbitrary or irrational or excessive. It is not as if that the petitioner was the only bidder found eligible. Even the work order has now been awarded.

18. We do not see any overwhelming public interest involved which warrants interference of this Court in the present matter.

19. We, therefore, do not find any merit in this Petition. The Writ Petition is dismissed with no orders as to costs.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik]