

JVS.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4243 OF 2024

Universal Communications	}	Petitioner
versus		
State of Maharashtra & Ors.	}	Respondents

Mr. Sarthak Diwan with Mr. Aditya Ghadge and Mr. Shantanu Palaskar, Advocates for the Petitioner.

Mr. O. A. Chandurkar, Additional Government Pleader with Ms. G. R. Raghuwanshi, AGP for Respondent Nos. 1 & 2.

Mr. Amey Deshpande with Ms. Vandana Bait for Respondent No. 3.

**CORAM: SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

DATE: 17th SEPTEMBER 2025

PER, SHREE CHANDRASHEKHAR, C.J.:

The Universal Communications, which is a partnership firm, has approached this Court through its partner, namely, Mr. Ashok Rahane. The petitioner-Firm seeks a declaration from this Court that 3rd respondent, namely, Saitech Solutions and Services is not qualified to participate in the Request for Proposal (in short, RFP) bearing No.2/Register/Desk-5/2023 which was issued from the office of the Superintendent of Police, Nashik Rural.

2. With such a declaration from this Court, the petitioner-Firm seeks to challenge the decision of the respondent no. 2 to declare Saitech Solutions and Services a successful bidder. Later on, the prayer clause was amended by incorporating the following prayers:-

“A1) To hold and declare that the Petitioner is qualified for the tender bearing Number 2/Register/Desk-5/2023 issued by the Respondent no. 2 as contemplated under the pre qualification criteria;

B1) To quash and set aside the impugned declaration made by the Respondent No. 2 whereby the Petitioners bid has been rejected as technically disqualified;

B2) To quash and set aside the impugned communication of technical disqualification dated 29.01.2024 issued by the Respondent no. 2.”

3. The learned counsel for the petitioner-Firm states that in view of the Government Resolution dated 1st December 2016 he would not press the ground relating to Earnest Money Deposit (EMD). The learned counsel for the petitioner-Firm, however, urges that disqualification of the petitioner-Firm in the technical bid was arbitrary and the objections raised by the petitioner-Firm to the qualification of 3rd respondent-Saitech Solutions and Services were ignored while awarding the work under the RFP dated 19th December 2023. The learned counsel for the petitioner-Firm referred to experience certificate produced by 3rd respondent-Saitech Solutions and Services at running page no. 899 and an information received by the petitioner-Firm through the RTI at running page no. 1144 vide exhibit ‘G’ to submit that the experience certificate produced by 3rd respondent-Saitech Solutions and Services *prima-facie* appears to be forged and 3rd respondent-Saitech Solutions and Services was not qualified for award of the work under the RFP. The learned counsel for the petitioner-Firm refers to the decision of this Court in Writ Petition No.876 of 2024 titled “*Hemant Ashar v. Nashik Municipal Smart City Development Corporation Limited & Ors.*” to submit that this Court may take cognizance of the forgery committed and the act of producing a forged document by 3rd respondent-Saitech Solutions and Services before the tendering authority.

4. Pursuant to the RFP dated 19th December 2023, the petitioner-Firm participated in the tender process but it was

declared technically disqualified on 29th January 2024. The RFP dated 19th December 2023 was issued from the office of the Superintendent of Police, Nashik-Rural for selection of service provider for supply, installation, operation and maintenance of IP Based CCTV System for Malegaon. The last date for bid submission was 10th January 2024 by 3:30 p.m. on Maha Tender Portal but, before that, the prospective bidders had an option to raise any query through e-mail on or before 2nd January 2024 by 4:00 p.m. Under the RFP, the method of selection was Quality-cum-Cost Based Selection (QCBS) which gave weightage for technical score upto 70% and for financial score upto 30%. The RFP contained every minute conceivable details and there is no apparent confusion in the RFP. The tendering Authority-2nd respondent took a stand in its reply-affidavit that L1 bidder has experience of installing more than 150 cameras and it has office within the district of Nashik. The work order was issued on 16th February 2024 and about 70% work under the contract was completed by the time the reply-affidavit on behalf of the 2nd respondent was filed. There were three other bidders who had submitted their bids and the objections raised by the petitioner-Firm on 19th January 2024 were duly replied on 25th January 2024.

5. This is the stand taken by 2nd respondent that the petitioner-Firm was disqualified on the basis of the report prepared by the Project Management Consultant. The petitioner-Firm failed to submit proper documents and this decision was communicated to it vide a letter dated 29th January 2024. The decision of the tendering Authority to hold Saitech Solutions and Services-3rd respondent as L1 bidder was approved by the CCTV Supervisory Committee and a formal contract was entered by 2nd respondent on 7th February 2024

with the 3rd respondent which furnished the bank guarantee of Rs.30,11,000/- being 1% of the tender value.

6. A reply-affidavit on behalf of the respondent no.2 has been filed stating as under:-

“ I, Bapurao Bira Dadas Age 30 years working as Sub Divisional Police Officer Nashik Rural Dist. Nashik do, hereby solemnly affirm and state as under: -

1. I say that I have been authorized to file this affidavit on behalf of respondent No.-02. I am filing the present Affidavit for a limited purpose for opposing the admission of the present Petition and grant of any interim reliefs/ad-interim reliefs therein. I have read the Writ Petition alongwith its exhibits filed by the Petitioner. I have perused the relevant record maintained by my office with reference to the subject matter of the present matter, and on the basis of the said record, I am filing this Affidavit. The contentions, which are not specifically denied by me in this Affidavit, should not be construed as an admission on my part. I crave leave to file Additional Affidavit to deal with factual aspects of this case, as and when required.

2. At the very outset, it is humbly submitted that the entire Petition is based on three grounds and it is being canvassed that arbitrary action has been taken by the Respondent No. 2. Objections and grounds are as under: -

Sr.	Objections	Response
A	Admission fees is not paid by all the bidders	It is submitted that the admission fees has been paid by all the bidder.
B	L-1 has not submitted the EMD	L-1 being MSME has sought exemption from the submission of EMD. Supporting documents to prove this category were provided and are part of record. Govt. Resolution dated 01/12/2016 of State Government of Maharashtra and Office Memorandum dated 25/07/2017 of the Central Government of India clearly gives exemption to MSME from the submission of EMD. Hereto annexed and marked as EXHIBIT-1 (COLLY) are the copies of the resolution and memorandum dt. 1.12.2016 and 25.7.2017
C	L-1 does not have experience certificate of installing 115 CCTV	Experience certificate dt. 28.11.2023 issued in favour of L-1 clearly records that they have installed more than 115 Cameras. Hereto annexed

	Cameras	and marked as Exhibit “2” is copy of the experience certificate which was provided by the L-1 bidder.
D	L-1 is not having office in Nashik District	GST Certificate provided by L-1 records his office address in Nashik District. Hereto annexed and marked as Exhibit “3” is copy of the GST Certificate.

It is humbly submitted that the grounds raised by the Petitioner in the present petition are baseless and untenable.

3. *It is humbly submitted that the present tender process is completed and formal contract has been executed between the Respondent Nos. 2 and 3. On 16.2.2024, Work Order has been issued in favour of Respondent No. 3 and as on date 70% work has already been carried out by the successful bidder i.e. Respondent No. 3.*

4. *In order to expose the false case being pleaded by the Petitioner, it is important to narrate the brief facts of the matter.*

4.1. *On 27.12.2023, Tender was published by Respondent No. 2 for selection of service bidder for supply, installation, operation and maintenance of IP based CCTV system for Malegaon. The said Tender was in the form of invitation to RFP (request for Proposal). The last date of submission of bids was 10.01.2024. In respect of the said Tender, four bids were received by the Tendering Authority. Hereto annexed and marked as **Exhibit 4** the copy of Tender 10/01/2024.*

4.2. *After receiving bids, technical envelopes of the bidders were opened on 11.1.2024 and all the documents which were uploaded by the bidder were available to all the parties who had participated in the Tender process. The said information was duly available on Maharashtra Govt. Official Portal i.e. www.mahatender.gov.in. In spite of the data being available on the webportal on 16.1.2024, the Petitioner has alleged that information of all the bidders is not visible on the website. This grievance of the Petitioner was immediately addressed and it was orally informed to him that the said portal is working properly and that all data is visible on the same. Subsequently, on 19.1.2024, the Petitioner admitted to the fact that the documents were visible to him. In the said letter, the Petitioner also raised various objections against the remaining three bidders who had submitted their bidding documents for bagging the said Tender. Hereto annexed and marked as **Exhibit 5** the copy of letter Dated 19/01/2024.*

4.3. *Objections and the grievances raised by the Petitioner on 19.1.2024, were duly replied to by Respondent No. 2 by letter dated 25.1.2024. This letter gives an explanation with supporting documents for clarifying the doubts and objections, which were raised by the Petitioner. Hereto annexed and marked as **Exhibit 6** the copy of letter Dated 25/01/2024.*

4.4. Thereafter, on 25.1.2024, the Project Management Consultants, which were appointed by the Tendering Authority presented its report after duly scrutinizing the Tender documents of all the bidders and it was informed to the Tendering Authority that the present Petitioner stood disqualified on grounds which are reproduced as under: - (Consultant report dated 25/1/2024) hereto annexed and marked as **Exhibit 7** is the copy of Consultant Report dated 25/1/2024.

4.5. Taking cognizance of the said report dated 25.01.2024, the Purchase Committee constituted by the Tendering Authority in their Minutes of Meeting made report in respect of the qualification/disqualification of all the bidders. It is evident from this Committee report that the Petitioner's bid stood disqualified for being incomplete due to non-submission of proper documents. This information of the Petitioner's disqualification was duly communicated to him by Respondent No. 2 via letter dated 29.1.2024, which annexed to the Petition at Exh. E, Page-718. Hereto annexed and marked as **Exhibit 8** is the copy of minutes of meeting dated 25/01/2024.

4.6. Thereafter, on 30.01.2024, following due process, Respondent No. 2 Authorities opened the financial bids of qualified bidders. Respondent No. 3 was declared as L-1 and the Purchase Committee in its Minutes of Meeting have clearly mentioned about the exercise and the scrutiny undertaken by them for coming to this conclusion of Respondent No. 3 as L-1 bidder. Hereto annexed and marked as **Exhibit 9** is the copy of the Minutes of Meeting dated 30/01/2024.

4.7. Name of Respondent no. 3 as L-1 bidder was thereafter duly communicated to the CCTV Supervisory Committee for their approval. The said Committee has duly approved the Respondent No. 3 as L-1 Bidder. The Respondent No. 2 had also taken the sanction of supervisory committee which is established as per government resolution dated 09.01.2017. Hereto annexed and marked as **Exhibit 10** the copy of Government Resolution dated 09/01/2017.

4.8. Post the said communication, Respondent No. 2 and 3 entered into formal contract. Pursuant to the formal contract being entered into between the said parties on 7.2.2024, Bank Guarantee of Rs.30,11,000/- (Rs. Thirty Lakhs Eleven Thousand only) (i.e. 1% of the Tendering amount) was also furnished and duly accepted by Respondent No. 2. Hereto annexed and marked as **Exhibit 11** is the copy of Bank Guarantee and Contract Dated 07/02/2024.

4.9. Post execution of the formal contract, on 16/02/2024 work order was issued by Respondent No. 2 favouring the Respondent No. 3 for the execution of the work. Hereto annexed and marked as **Exhibit 12** the copy of purchase order Dated 16/02/2024.

4.10. As on 20th April, 2024, 70% of the work of installation of CCTV Cameras has been completed by Respondent No-03.

In view of the facts and circumstances narrated above, it is humbly submitted that the Petition filed by the Petitioner has no merit and it needs to be dismissed with costs."

7. The petitioner-Firm states that the decision of the respondent no. 2 to award the work under the RFP to Saitech Solutions and Services is arbitrary, unreasonable, unconstitutional, ultra vires and discriminatory. This contention that its disqualification in the technical bid is arbitrary, illegal and irrational has no foundation in fact or in law. In a tender matter, the Employer has been given sufficient powers to take a decision which would be the most suitable and workable in its own interest. That seems to be the reason that the tendering Authority must be provided sufficient fair play in the joints and it is not every mistake committed by the Employer that invites interference of the writ Court.

8. The power of judicial review under Article 226 of the Constitution of India is very limited. This limitation on the power of judicial review is further restricted in the matters of contract. In contractual matters, a party to the tender process should be given equal treatment and beyond this the aggrieved party cannot claim anything more. As observed by the Hon'ble Supreme Court in "*Jagdish Mandal v. State of Orissa & Ors.*" (2007) 14 SCC 517, the writ Court will interfere with the decision of the Employer only where it is found that the decision of the Employer was arbitrary, illegal or irrational. The Hon'ble Supreme Court held as under:-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of

public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(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";

(i) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

9. As we gather from the materials on record, the information obtained through the RTI was provided to the petitioner-Firm on 1st February 2024 but before that the technical bids of the parties were opened and the petitioner-Firm was declared disqualified on 29th January 2024. The petitioner-Firm has failed to demonstrate *bona fide* in prosecuting this writ petition and after 18th October 2024 it did not take any step in the matter. In “*Association of Registration Plates v. Union of India & Ors.*” (2005) 1 SCC 679, the Hon'ble Supreme Court held that it is necessary to give greater latitude to the State Authorities in the matters of formulating conditions of a tender document and awarding a contract unless the action of the State Authority is found malicious and misuse of its statutory powers. The Hon'ble Supreme Court held as under :-

"38. In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of the class of intending tenderers under Article 19 of the Constitution. On the basis of the submissions made on behalf of the Union and State authorities and the justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep indigenous manufacturers out of the field. It is explained that on the date of formulation of scheme in Rule 50 and issuance of guidelines thereunder by the Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long-term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates."

10. As to the production of forged documents by 3rd respondent-Saitech Solutions and Services, we would only indicate that it is not a mere statement made by an aggrieved party or some documents or some information obtained through the RTI which is sufficient to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is well remembered that the writ Court would decline to interfere in the matter even where some arguable issue has been raised.

11. Writ Petition No. 4243 of 2024 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

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by PRAVIN
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