

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9940 OF 2024

Ashtavinayak Assessment &
Business Consultants Private
Limited

Through its Authorized Signatory,
Shri. Rohit Raj (Director)

... *Petitioner*

: *Versus* :

1. The Commissioner for Co-
operation and Registrar, Co-
operative Societies, Maharashtra,
Pune.

2. Ministry of Co-operation,
Commerce and Textiles, through
its Secretary State of Maharashtra.

3. Workwell Infotech Pvt. Ltd.

....*Respondents*

Mr. Akshay Patil, *i/by. Mr. Saakshat Relekar, for the Petitioner.*

Mr. O.A. Chandurkar, *Addl. Govt. Pleader and Mrs. G.R. Raghuvanshi,*
AGP for State-Respondent Nos.1 and 2.

Mr. Kuldeep K. Khamare, *for Respondent No.3.*

**CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATED : 10 JUNE 2025.

Order : (Per Sandeep V. Marne, J.)

1) The Petitioner is aggrieved by rejection of its bid for empanelment as authorised institute for conducting online recruitment process for District Central Co-operative Banks. It has challenged the entire tender process, panel published vide order dated 12 March 2024 and letter dated 22 April 2024 rejecting its bid on the ground of ineligibility.

2) With a view to ensure transparency in recruitment process by District Central Co-operative Banks in the State of Maharashtra, an order dated 15 June 2018 was issued by the State Government under Section 79A(1) of the Maharashtra Co-operative Societies Act, 1960 (MCS Act) by directing recruitment process to be undertaken only through online process. The order dated 15 June 2018 envisaged appointment of recruitment agencies by issuing advertisements. The order also stipulated the procedure to be adopted while undertaking online recruitment process. By further order dated 23 June 2022, certain modifications were made in the online recruitment process to be undertaken through the empaneled agency. The order dated 23 June 2022 provides *inter-alia* that a panel shall be prepared of authorised agencies for undertaking online recruitment process by the Commissioner of Co-operation and Registrar, Co-operative Societies.

3) In pursuance of order dated 15 June 2018 and 23 June 2022 issued under Section 79A(1) of the M.C.S. Act, the Commissioner for Co-operation and Registrar, Co-operative Societies issued advertisement for preparation of panel of authorised agencies for undertaking online recruitment process for District Central Co-operative Banks. The advertisement prescribed eligibility conditions for agencies for being

empaneled. Respondent No.3 filed Writ Petition No. 5978/2023 challenging the tender process, which had prescribed the eligibility condition of registration of the agency for minimum period of 10 years. It was contended by the third Respondent that though it fulfilled the other criteria of being headquartered in the State of Maharashtra and conduct of minimum three online recruitment processes for banks in Maharashtra, it was disqualified on account of its non-registration atleast for a period of 10 years. An interim order dated 3 May 2023 was passed in Writ Petition No. 5978/2023 restraining the first Respondent from finalising the panel while proceeding ahead with the tender process. During pendency of Writ Petition No. 5978/2023, the first Respondent deleted the condition of registration of agency for minimum period of 10 years. Accordingly, Writ Petition No. 5978/2023 was rendered infructuous and came to be disposed of by order dated 23 February 2024.

4) Respondent No.1 thereafter issued office order dated 12 March 2024 publishing panel of authorised agencies in pursuance of the impugned tender process. In the said panel, six agencies, including the Respondent No.3 have been empaneled. Petitioner has not been empaneled by office order dated 12 March 2024 which is challenged in the present petition. By communication dated 22 April 2024, the Petitioner was communicated the reasons for its non-empanelment stating that it did not fulfill the eligibility criteria of being headquartered in Maharashtra and conduct of minimum three online recruitment processes in the prescribed banks/institutes within the State of Maharashtra. This is how Petitioner has been adjudged ineligible in the impugned tender process. Communication dated 22 April 2024 is also subject matter of challenge in the present petition.

5) We have heard Mr. Patil, the learned counsel appearing for the Petitioner, who would submit that the Petitioner has been erroneously declared ineligible in the impugned tender process. That the Petitioner fulfills the criteria of having conducted minimum three online recruitment processes. That Petitioner has so far conducted 17 online recruitment processes for various government agencies. That the NIT did not prescribe that conduct of online recruitment process ought to be for government agencies located in the State of Maharashtra. That acceptance of experience of conducting online recruitment process for nationalised banks would obviously mean that online recruitment process conducted outside State of Maharashtra could also have been taken into consideration for fulfilling the eligibility criteria. Mr. Patil would further submit that the tender condition of registration of agency for ten years was deliberately deleted to favour Respondent No.3, who has ultimately been empaneled. That it is impermissible to alter the tender conditions midway thereby affecting the eligibility of bidders. That rules of the game could not have been altered once the game had begun. That the entire process smacks of by arbitrariness wherein Petitioner has been disqualified while the Third Respondent, who admittedly did not fulfill the tender conditions, is held eligible by altering the tender conditions. He would not only pray for setting aside the impugned panel but for inclusion of Petitioner's name therein.

6) The petition is opposed by Mr. Chandurkar, the learned Additional Government Pleader appearing for Respondent Nos.1 and 2. He would submit that Respondent No.1 desired experience of conduct of online recruitment process for banks and government agencies within the State of Maharashtra. That one of the important tender conditions is that the agency must be headquartered in the State of Maharashtra. That Petitioner conducted 17 online recruitment

processes for various government agencies outside the State of Maharashtra which makes it clear that it neither operates within the State nor is headquartered therein. That no document is produced on record to indicate that Petitioner has been headquartered within the State. So far as deletion of eligibility condition of 10 years of registration is concerned, he would submit that the issue is academic in view of Petitioner's ineligibility. Since the advertisement prescribed the condition of minimum three online recruitment processes, the other condition of registration of agency for 10 years was clearly redundant and has rightly been deleted by the First Respondent so as to consider more bids in the tendering process. That such *bonafide* action on the part of the First Respondent cannot be questioned by the Petitioner who himself is declared ineligible. He would pray for dismissal of the petition.

7) We have heard also Mr. Khamare, the learned counsel for the third Respondent.

8) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petitioner is adjudged ineligible in the impugned tender process on twin grounds of (i) not having headquarters within the State of Maharashtra and (ii) non-conduct of minimum three online recruitment processes for banks/government agencies within the State of Maharashtra. Since the Petitioner itself is declared ineligible in the tender process, in our view, it is not necessary to go into the other issue of deletion of condition of 10 years for registration of agency. Since Petitioner is declared ineligible, no purpose would be served in deciding the other issue of deletion of tender condition unless the Petitioner first satisfies this Court that he

fulfills all the eligibility conditions prescribed in the notice inviting the tender.

9) Perusal of the tender conditions would indicate that the tendering authority has prescribed condition of location of headquarters of the agency within the State. There is nothing on record to indicate that the Petitioner is headquartered in the State of Maharashtra. Petitioner has not placed any document on record to prove that its headquarter is located in the State of Maharashtra. On the contrary, the certificate of its incorporation as well as certificate of change of name are issued by the Registrar of Companies, Kolkata. Petitioner has thus failed to satisfy fulfillment of tender condition of location of its headquarters within the State of Maharashtra.

10) Another important tender condition was as under:

सदर संस्थेने या अगोदर व्यापारी बँका (राष्ट्रीयकृत बँका/खाजगी बँका/प्रादेशिक ग्रामीण बँका), जिल्हा मध्यवर्ती सहकारी बँका, नागरी सहकारी बँका तसेच शासनातील विविध विभागांसाठी किमान 3 वेळा ऑनलाईन नोकरभरतीची प्रक्रिया राबविलेली असावी.

11) Thus, one of the eligibility conditions in the NIT was conduct of minimum three online recruitment processes for commercial banks/nationalised banks/private banks/regional rural banks, /District Central Co-operative Banks, Urban Co-operative Banks or by different departments of the Government. According to the Petitioners, the words included in Condition No.2 are 'शासनातील विविध विभागांसाठी' which would mean that the work experience of conduct of online recruitment process for departments of any of the governments ought to have been considered. On the other hand, the tendering authority has interpreted the term 'शासन' (Government) to mean 'State Government' which has been done on account of the fact that the tendering authority

wants to empanel only those agencies who have experience of conducting online recruitment process for banks and government departments within the State of Maharashtra. This is the interpretation of the term 'शासन' placed by the tendering authority. It is well settled position of law that the tendering authority, being the author of the tender document, the interpretation placed by the tendering authority about the words used in eligibility criteria would be final and it would be beyond the scope of judicial review for Courts to place a different interpretation than the one given by the tendering authority. This position is enunciated in following judgments of the Apex Court :

- (I) In Sillpi Constructions Contractors Versus. Union of India and another¹, it is held in para-15 as under :

15. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.* [*Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818] it was held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision. **The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.**

(emphasis added)

- (II) In Agmatel India Private Limited Versus. Resoursys Telecom and others², the Apex Court has held in paras-26 and 34 as under :

¹ (2020) 16 SCC 489

² (2022) 5 SCC 362

26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.

34. The High Court, while supporting its process of reasoning, has referred to such principles which, with respect, we find entirely inapposite and beyond the periphery of the question involved in the present case. **As noticed, in such matter of contracts, the process of interpretation of terms and conditions is essentially left to the author of the tender document and the occasion for interference by the Court would arise only if the questioned decision fails on the salutary tests laid down and settled by this Court in consistent decisions, namely, irrationality or unreasonableness or bias or procedural impropriety.**

(emphasis added)

(III) In *Galaxy Transport Agencies, Contractors, Traders, Transports and Supplies vs. New J. K. Roadways, Fleet Owners and Transport Contractors & Ors.*³, the Apex Court has held that the interpretation placed by the tendering authority cannot be a second guessed by Courts in judicial review proceedings. In para-14 it is held as under :

14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.* [*Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818] , this Court held : (SCC p. 825, para 15)

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the

³ 2020 SCC OnLine SC 1035

tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

(emphasis added)

12) Thus, it is well settled principle of law that the interpretation placed by the tendering authority to a particular stipulation in the NIT would prevail over the one sought to be made out by a bidder. In the present case, the First Respondent has interpreted the word ‘ शासन’ to mean Government of Maharashtra. Such interpretation would be binding on the bidders. Even otherwise, there is nothing irrational on the part of the First Respondent to expect an experienced agency having conducted online recruitment process within the State of Maharashtra to be empaneled since the recruitment ultimately is to be conducted for District Central Co-operative Banks located within the State of Maharashtra.

13) In our view, Petitioner has rightly been adjudged ineligible as it has failed to satisfy the mandatory eligibility criteria of being headquartered in Maharashtra and having conducted minimum three online recruitment processes for banks/government agencies within the State of Maharashtra.

14) As observed above, since the Petitioner is adjudged ineligible, it would not have any *locus* to question deletion of other tender condition of minimum 10 years of registration of agency. We are therefore not inclined to entertain challenge raised by the Petitioner in respect of deletion of said condition. The challenge in this regard is

however kept open to be raised by any other person/agency in appropriate proceedings.

15) We therefore find the impugned tender process, as well as the panel prepared by the first Respondent to be unexceptional. The petition is devoid of merits. It is accordingly **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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