

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

**WRIT PETITION NO. 10052 OF 2024
WITH
INTERIM APPLICATION NO. 11739 OF 2024**

M/s. C 4 Infrastructure Pvt. Ltd. .. Petitioner
Versus
Maharashtra State Road Transport
Corporation, Nashik Division & Ors. .. Respondents

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Mr. Surel Shah, Senior Advocate, through V.C., a/w Mr. Vishal Tambat, Ms. Chaitali Bhogle, Ms. Rochelle Fernandes & Mr. Rishabh Tiwari, Advocates for the Petitioner.

Mr. Nitesh Bhutekar, Advocate for Respondent Nos. 1 to 3.

Ms. Medha Jondhale a/w Mr. Anand Jondhale, Ms. Rajandini Jondhale & Mr. Harshvardhan Shinde, Advocates for the Applicant & for Respondent No.4.

Ms. Neha S. Bhide, Government Pleader a/w Mr. O. A. Chandurkar, Additional Government Pleader & Mrs. G. R. Raghuwanshi, AGP for Respondent Nos.5 and 6.

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

**RESERVED ON: 17th NOVEMBER 2025.
PRONOUNCED ON: 21st NOVEMBER 2025.**

PER, SHREE CHANDRASHEKHAR, C.J.:

Writ Petition No. 10052 of 2024 has been filed by M/s. C 4 Infrastructures Pvt. Ltd. (in short, the petitioner-Company) which is a company registered under the Companies Act, 2013 and engaged in executing the government infrastructure projects.

2. The petitioner-Company seeks to challenge the bid opening summary dated 5th July 2024. The grievance of the petitioner-Company is that the bid submitted by it was rejected on technical

ground and M/s. R. K. Infraconstro Pvt. Ltd. has been illegally declared successful bidder. A consequential prayer made by the petitioner-Company is for a direction to the tendering Authority to accept its bid for e-Tender Notice No.10/2023-24 published on 6th February 2024 on the official website portal of the Maharashtra State Road Transport Corporation, Nashik Division (in short, MSRTC).

3. On 23rd July 2024, the following order was passed in this writ petition :-

- “1. On the oral prayer made by the learned counsel for petitioner, let the Principal Secretary (I.T.) be impleaded and as party-respondent No.6.*
- 2. Necessary amendment shall be incorporated by the learned counsel for the petitioner during the course of the day.*
- 3. Re-verification is dispensed with.*
- 4. Issue notice to respondent Nos.1 to 3 and newly added respondent no.6, returnable on 6th August 2024.*
- 5. Mr. Bhutekar, learned counsel has put in appearance on behalf of respondent Nos.1 to 3 and waives service of notice, whereas Mr. Kakade, learned Government Pleader puts in appearance on behalf of respondent No.5-State and waives service of notice.*
- 6. The petitioner states that the subject tender appears to have been declared non-responsive purportedly for the reason that the petitioner had not submitted the Geo-tapping certificate signed by the Divisional Engineer. The submission of the petitioner is that despite making several requests, the Divisional Engineer did not sign Geo-tapping certificate which prevented the petitioner from submitting the same. As a result of which, without there being any fault on its part, the petitioner’s bid has been declared as non-responsive.*
- 7. We have been informed that on 5th July 2024 a technical bid was opened wherein the petitioner’s technical bid was rejected and simultaneously the financial bid was also opened.*
- 8. To ascertain the financial bid offered by the petitioner, we direct that the financial bid submitted by the petitioner shall also be opened, and the rates quoted by the petitioner shall be brought on record of this petition by way of an affidavit to be filed by the respondent No.1. We have been informed that the entire tender process has been conducted through E-mode on the portal www.mahatender.com managed by the National Informatics Center (NIC).*
- 9. Accordingly, for compliance of this order, the NIC or any other concerned authority shall extend full cooperation to the respondents. The technical bid of the petitioner shall be opened within ten days from today.*
- 10. Stand over to 6th August 2024. To be placed High on Board.*
- 11. The respondent-Corporation shall file their affidavit-in-reply disclosing the rate quoted by the petitioner by the next date.”*

4. Aggrieved by the aforesaid order, M/s. R. K. Infraconstro Pvt. Ltd filed Special Leave to Appeal (Civil) No.18014 of 2024. The Special Leave to Appeal came to be allowed by an order dated 25th August 2025 with a direction to the High Court to take up the application for interim order or to decide the main matter itself after hearing the parties. The order passed by the Hon'ble Supreme Court was brought to the notice of the Court by the Registry on 19th September 2025 and this writ petition came up on the Board under the heading 'Supreme Court expedited matters'.

5. Inviting a tender for reconstruction of the bus station at Dindori, e-Tender Notice No.10 of 2023-24 was published on the official website portal of the MSRTC on 6th February 2024. The bid submission started on 6th February 2024 and terminated at 1:00 p.m. on 20th February 2024. The petitioner-Company states that the Executive Engineer of the MSRTC called the pre-bid meeting on 12th February 2024 as per the schedule published on 6th February 2024 and a "Common Set of Deviations" was published through a corrigendum which pertained to a few changes in the existing terms and conditions under e-Tender Notice. Under the modified condition, it was mandatory to visit the site and prepare a Geo-tagging site report signed by the Divisional Engineer. The petitioner-Company has pleaded that its authorized representative visited the site on 17th February 2024 and took Geo-tagging photograph and tried to contact the Divisional Engineer, namely, Mrs. Chaitali Bhusare for taking her signature over Annexure-IV but she was not in the office; this officer is not a party in the present proceedings. This is the case pleaded by the petitioner-Company that the Geo-tagging photograph and site visit report in a format vide Annexure-IV was submitted in

the office of the Divisional Engineer on 20th February 2024 at 10:00 a.m. but the respondent no.3 did not put her signature thereon. Therefore, a representation was made before 2nd respondent-Executive Engineer for a direction to the Divisional Engineer to provide her signature over Annexure-IV. On 20th February 2024, a request was again made through e-mail at 11:49 a.m. to the respondent no.2 for a signature over Annexure-IV but the respondent no.2 did not certify Annexure-IV. As the bid submission period was to expire at 1:00 p.m. on 20th February 2024, the bid of the petitioner-Company was submitted online with all supporting documents on 20th February 2024 at 12:26 p.m. The petitioner-Company further states that the hard copy of the technical documents was submitted on 22nd February 2024 in a sealed envelope as per the mandatory condition under clause 11 of the e-Tender Notice. According to the petitioner-Company, it was intimated to remain present for a meeting on 28th February 2024 and on that date it was informed that the bids submitted by the competing parties were opened on 22nd February 2024 as per the schedule. The petitioner-company lodged a protest on 28th February 2024 that it did not receive any intimation regarding opening of the bid on 22nd February 2024. It has further pleaded that it submitted the Bank Solvency Certificate and Annexure-IV with Geo-tagging photograph pursuant to the letter dated 29th February 2024 issued by the respondent no.2. The petitioner-Company states that the action of the respondent no.3 was arbitrary and *mala fide* and the rejection of its technical bid was illegal because there is no requirement in law to submit Geo-tagging site visit report with signature of the Divisional Engineer. The petitioner-Company has made the following prayers: -

“a) Issue Writ of Mandamus or any other appropriate Writ, Order or direction thereby calling for record and proceeding before Respondents no

1 to 3 in respect of tender floated by the Maharashtra State Road Transport Corporation, Nashik Division, Respondent no. 1 herein, bearing e-tender notice no: 10/2023-24 for Reconstruction of Bus Station at Dindori in Nashik Division and after calling for the same be pleased to quash and set aside the communication/order dated 5.7.2024 whereby the Petitioner is disqualified from participating in the said tender on such terms and conditions this Hon'ble Court may deem fit and proper;

b) This Hon'ble Court by issuing Writ of Mandamus thereby direct the Respondents no 1 to 3 to accept the tender document of the Petitioner, in respect of tender floated by the Maharashtra State Road Transport Corporation, Nashik Division, Respondent no. 1 herein, bearing e-tender notice no: 10/2023-24 for Reconstruction of Bus Station at Dindori in Nashik Division and further not to disqualify Petitioner's technical bid on the ground that signature of Respondent no. 3 were not taken on ANNEXURE IV by the Petitioner;

c) Pending hearing and decision of present writ petition the Respondents may be restrained by a order of injunction from issuing Letter of a acceptance or awarding the contract or issuing Work Order under the tender document in respect of tender floated by the Maharashtra State Road Transport Corporation, Nashik Division, Respondent no. 1 herein, bearing e-tender notice no: 10/2023-24 for reconstruction of Bus Station at Dindori in Nashik Division, to Respondent no. 4 or any other person;

d) ad-interim relief in terms of prayer clause (c).

e) Allow any other reliefs this Honorable Court may deem fit and proper in the circumstances of the case and thus render justice.”

6. In its reply, the respondent nos.1 to 3 stated that the financial bid of the petitioner-Company was opened on 2nd August 2024 pursuant to an order passed by this Court on 23rd July 2024 and it was found that the rate quoted by the petitioner-Company was below the estimated cost for the tender; 4.11% below the estimated cost. These respondents have taken a stand that the petitioner-Company did not approach the Divisional Engineer between the period 17th February 2024 to 20th February 2024 for her signature over the site-visit report and it was only on 20th February 2024 that it delivered a letter which was entered in the Inward Register kept in the office of the Divisional Engineer. It has been denied that the

Divisional Engineer had left the office or avoided signing Annexure-IV. On 22nd February 2024, the bids submitted by the competing parties were opened and a system generated message was automatically sent to all the bidders from the website “mahatenders.gov.in”. Notwithstanding that, the petitioner-Company was provided one more opportunity vide letter dated 29th February 2024 to produce the Geo-tagging certificate signed by the Divisional Engineer and the Bank Solvency Certificate within three days but it did not provide the Geo-tagging site-visit report signed by the Divisional Engineer.

7. The learned counsel appearing for the respondents opposed the writ petition primarily on the ground that the petitioner-Company has no vested right to seek a direction for its participation in the competitive bidding and the factual dispute raised by it cannot be decided in the writ proceeding. Ms. Medha Jondhale, the learned counsel appearing for the respondent-M/s. R. K. Infraconstro Pvt. Ltd. opposed the writ petition and referred to the decision in “*Maa Binda Express Carrier*”¹ wherein the Hon’ble Supreme Court observed as under :-

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such

1 *Maa Binda Express Carrier & Anr. v. Northeast Frontier Railway & Ors.* AIR SCC 2014 SC 329.

commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See *Meerut Development Authority v. Assn. of Management Studies* [(2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803] and *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617 : (2000) 1 SCR 505])

10. The scope of judicial review in contractual matters was further examined by this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651] , *Raunaq International Ltd. case* and in *Jagdish Mandal v. State of Orissa* [(2007) 14 SCC 517] besides several other decisions to which we need not refer.

11. In *Michigan Rubber (India) Ltd. v. State of Karnataka* [(2012) 8 SCC 216] the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words:

23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources

to successfully execute the work; and

(e) if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

20. 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’ and (ii) Whether the public interest is affected. If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

(emphasis supplied)”

8. This is an admitted position at the Bar that there were eight participants who had submitted their bids and four of them were declared successful in the technical evaluation. This is well settled that the highest bidder cannot claim a vested right for award of tender in his favor. A tenderer or contractor with a grievance can always seek damages in the civil Court. The interference in a contract matter is permissible only when the decision making process is found actuated with *mala fide* or the decision of the Employer was intended to favor someone. The report of Geo-tagging prepared by the intending bidder is a condition under the NIT. The “Common Set of Deviations” incorporating the modified conditions were included in the NIT after the pre-bid meeting with the intending bidders. Therefore, the insistence of the Employer seeking compliance with this modified condition cannot be made an issue before the writ Court. Whether the Geo-tagging report itself is sufficient to establish physical site verification by the intending bidder is a technical issue. The Employer which is the author of the tender document is the best person to

understand and appreciate its requirement and interpret the tender document. In “*N. G. Projects Ltd.*”², the Hon'ble Supreme Court observed that whether a term of contract is essential or not is to be viewed from the perspective of the Employer, and by the Employer. In paragraph no.22 of the judgment, the Hon'ble Supreme Court held as under:-

“22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.”

9. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot enter into a dispute which requires technical expertise. In “*Tata Cellular*”³, the Hon'ble Supreme Court held that the terms and conditions under the NIT are not open to judicial scrutiny, because more often than not, such decisions are made qualitatively by the experts. The decision in “*Afcons Infrastructure Limited*”⁴ is even more instructive. There the Hon'ble Supreme Court observed that the interpretation of the tender document by the Employer of a project may not be acceptable to the Constitutional Court but that by itself is not a reason for interference in the tender matter. The award of tender is a commercial decision but the decision is not always guided by the price considerations. The bid offered by the petitioner-Company below 4.11% the estimated cost is

2 *N. G. Projects v. Vinod Kumar Jain & Ors.* (2022) 6 SCC 127.

3 *Tata Cellular v. Union of India*, (1994) 6 SCC 651.

4 *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr.*, (2016) 16 SCC 818.

not a relevant factor to permit its participation in the tendering process. The dispute raised by the petitioner-Company that the Divisional Engineer was not on duty and she avoided signing Annexure-IV document are such questions of fact in support thereof no evidence has been produced by the petitioner-Company. This also shall be a seriously disputed question of fact that the Divisional Engineer had biased attitude and she avoided to sign Annexure-IV document to eliminate the petitioner-Company from participating in the competitive bidding. There is not even a hint in the entire pleadings in the writ petition as to any animosity or grudge on the part of the Divisional Engineer to adopt such a course of action. There was sufficient time for the intending bidders to comply with the NIT requirements and, in fact, four bids were found responsive in the technical evaluation. In this factual scenario, any interference by the writ Court in the tendering process would be improper.

10. The sanctity of the tendering process and insistence of the Employer to adhere to the NIT conditions should not be diluted. Under Article 226 of the Constitution of India, the writ Court should exercise caution and interfere in the contractual matters only where the decision of the Employer is found illegal or arbitrary or actuated with *mala fide*. In “*Silppi Constructions Contractors*”⁵, the Hon'ble Supreme Court added a word of caution that the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. The Hon'ble Supreme Court further reiterated that the Courts must give ‘fair play in joints’ to the government and public sector undertakings in the matters of contract. We may also usefully refer to ‘*Jagdish Mandal*’⁶ wherein the Hon'ble Supreme Court observed that attempts by the unsuccessful tenderers

5 *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489.

6 *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517.

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 the Courts to interfere by exercising the powers of judicial review, should be resisted. In the present case, we do not see any reason for interference with the decision of the Employer to reject the technical bid submitted by the petitioner-Company.

11. Writ Petition No.10052 of 2024 is bereft of merits and, accordingly, dismissed.

12. In view of dismissal of Writ Petition No.10052 of 2024, Interim Application No.11739 of 2024 does not survive and same is, accordingly, disposed of.

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[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]