

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

WRIT PETITION NO. 11099 OF 2024

Gurudatta Infrastructures

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

...

Mr. A. M.Kulkarni i/by Mr. Sagar Sonawane & Mr. Ajinkya Barke,
Advocates for the Petitioner.

Mr. Nitesh Bhutekar, Advocate for Respondent Nos.2 to 4– MSRTC.

Ms. Medha Jondhale a/w Mr. Anand Jondhale, Ms. Rajandini
Jondhale & Mr. Harshvardhan Shinde, Advocates for Respondent
No.5.

Ms. Neha S. Bhide, Government Pleader a/w Mr. O. A. Chandurkar,
Additional Government Pleader & Mrs. G. R. Raghuwanshi, AGP for
Respondent No.1.

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

RESERVED ON: 17th NOVEMBER 2025.

PRONOUNCED ON: 21st NOVEMBER 2025.

PER, SHREE CHANDRASHEKHAR, CJ.:

Gurudatta Infrastructures (in short, petitioner-Firm) which is a
Partnership-Firm has filed this writ petition through its partner,
namely, Sanjay Ashok Rode.

2. The petitioner-Firm seeks to challenge the bid opening summary
dated 5th July 2024. The grievance of the petitioner-Firm 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
related prayer made by the petitioner-Firm 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 Writ Petition No.10052 of 2024 :-

- “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. M/s. R. K. Infraconstro Pvt. Ltd filed Special Leave to Appeal (Civil) No.18014 of 2024 aggrieved by the said order dated 25th August

2025. 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.

5. This writ petition was filed on 5th August 2024 and listed before the Court on 13th August 2024. This writ petition was not prosecuted for about five months and the petitioner-Firm was quite happy with no decision by the Court in its writ petition. The order passed by the Hon'ble Supreme Court was brought to the notice of the Court and then this writ petition has come-up on the Board under the heading 'Supreme Court expedited matters'.

6. Briefly stated, for reconstruction of 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. at 20th February 2024. 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 Deviation" was published through a corrigendum which pertained to a few changes in the existing terms and conditions under the said 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-Firm states that Mr. Mangesh Nagare who is its purchase in-charge visited the site on 17th February 2024 at 4:27 p.m. and took a photograph of the Geo-tagging visit with location particulars. He visited the office of the respondent nos.3 and 4 with all details between 17th February 2024 to 20th February 2024 for the signature of the Divisional Engineer. This is further stated by the petitioner-Firm that its employee and one of its partners tried to

contact the Divisional Engineer but she did not answer their calls. Finally, a letter was submitted on 20th February 2024 at 11:25 a.m. for signature of the Divisional Engineer on the Geo-tagging report. Constrained, a hard copy of the technical envelope with the necessary documents was submitted on 21st February 2024 in the office of the Executive Engineer and, in response thereof, the petitioner-Firm received a communication dated 29th February 2024 requiring it to submit Annexure-IV with the signature of the Divisional Engineer and the Solvency Certificate. According to the petitioner-Firm, a factual clarification was given to the Executive Engineer on 29th February 2024 that the Divisional Engineer wilfully did not put a signature on Annexure-IV. On 5th July 2024, when the bid opening summary was published, the petitioner-Firm came to know that its bid has been rejected on a technical ground that Annexure-IV was not signed by the Divisional Engineer. The petitioner-Firm filed the present writ petition with the following prayers: -

***A.** Rule be issued and record and proceedings pending before Respondents in respect of "e-tender notice No.10/2023-24" dated 06.02.2024 for reconstruction of Bus Station at Dindori in Nashik Division, be called for;*

***B.** By suitable Writ, Order or direction, this Hon'ble Court be pleased to quash and set aside the impugned bid opening summary dated 5.7.2024 published by the is rejected on is illegal one. This Respondent No.3 the Executive Engineer, thereby declared that the bid of Petitioner technical ground is illegal one. This Hon'ble Court be pleased to issue directions against the Respondent Nos. 1 to 4 and direct them to accept the technical bid/ tender document of Petitioner and open the financial bid offered by Petitioner in respect of the tender floated by the Maharashtra State Road Transport Corporation, Nashik Division i.e. "E-Tender Notice No. 10/2023-24" for reconstruction of Bus Station Dindori in Nashik Division;*

***C.** This Hon'ble Court by issuing appropriate writ, Order be pleased to further direct the Respondents that not to disqualify Petitioner's technical bid on the ground that the signature of Respondent No.4 Divisional Engineer was not obtained on Geo-Tagging report i.e. ANNEXURE IV by the Petitioner Partnership Firm;*

D. Pending hearing and final disposal of present Writ the Respondents be restrained from issuing Letter of 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 i.e. "E-Tender Notice No.10/2023-24" for reconstruction of Bus Station at Dindori in Nashik Division be kindly stayed;

E. ad-interim relief in terms of prayer clause (D) may be granted;

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

7. Mr. A. M. Kulkarni, the learned counsel for the petitioner-Firm would submit that there was no need for obtaining signature on the Geo-tagging site visit report. Such a requirement has no statutory backing and, moreover, it was a minor defect in the technical bid submitted by the petitioner-Firm. The learned counsel for the petitioner-Firm submitted that the in-built technical effect of Geo-tagging shall provide sufficient proof of site visit and certification and signature of the Divisional Engineer would not change the factual aspect. The action of the Divisional Engineer in not providing signature over Annexure-IV was intentional and actuated with bias to prevent the petitioner-Firm from participating in the tender. It is submitted that the facts stated in the writ petition and affirmed in the affidavit by Sanjay Ashok Rode are not denied by the respondents by filing an affidavit in-reply and, therefore, it must be held that the entire tendering process was vitiated on account of avoidance to competitively bidding. The learned counsel for the petitioner-Firm relied on (i) "*Poddar Steel Corporation*"¹ (ii) "*G. J. Fernandez*"² (iii) "*BVG India Limited*"³.

8. The learned counsel appearing for the respondents opposed the writ petition primarily on the ground that the petitioner-Firm has no

¹ *Poddar Steel Corporation v. Ganesh Engineering Works & Ors.*, (1991) 3 SCC 273.

² *G. J. Fernandez v. State of Karnataka & Ors.*, (1990) 2 SCC 488.

³ *BVG India Limited v. The Chief Rolling Stock Engineer, Central Railway in Writ Petition No.18859 of 2024.*

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. referred to the decision in “*Maa Binda Express Carrier & Anr.*”⁴ 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 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]

⁴ *Maa Binda Express Carrier & Anr. v. Northeast Frontier Railway & Ors.*, (2013) SCC OnLine SC 1060.

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)"

9. In “*BVG India Limited*”, this Court observed as under:-

“10. The scope of interference with matters pertaining to contractual disputes is well settled. In case a grievance is made against an arbitrary action or in-action of the State, even if it arises from a non-statutory contract, the issue with regard to grant of relief in the writ jurisdiction can be considered. (See M.P. Power Management Company Ltd. v/s. Sky Power Southeast Solar India Pvt. Ltd. - 2023 (2) SCC 703). In G.J. Fernandes v/s. State of Karnataka-1990(2) SCC 488, the Hon’ble Apex Court has considered the distinction between mandatory documents and documents of directory/ancillary in nature. Reference in this regard can also be made to the judgment in Poddar Steel Corporation Ltd. v/s. Ganesh Engineering Works and Ors. - 2012(1) Mh.L.J. 533.”

10. In “*Poddar Steel Corporation*”, the Hon’ble Supreme Court observed that a minor technical irregularity can be waived. In that case, there was a requirement of depositing the earnest money with the tender either in cash or by demand draft drawn on the State Bank of India. The bid of the Poddar Steel Corporation being the highest bidder was accepted. The said entity had tendered its bid with a banker’s cheque marked and certified by the Union Bank of India. The authenticity of the banker’s cheque was verified from the Bank and an assurance to honour the cheque was obtained from the Bank. The Hon’ble Supreme Court held that the Employer had authority to waive the literal compliance of the clause 6 which required the bid to be accompanied by the earnest money in cash or a demand draft. In “*G. J. Fernandez*”, the Hon’ble Supreme Court observed that the Court should not interfere, though it may be inclined to read and construe the conditions differently, where a party has been consistently *bona fide* interpreting the standard prescribed by it in a particular manner. The Hon’ble Supreme Court further observed that the Employer has a right to punctiliously and to rigidly enforce the conditions and stipulations in a tender notice. The Hon’ble Supreme Court further observed that it is open to the Employer to decline to consider a party for the award of work if the party does not strictly comply with the

requirements under the NIT. The Hon'ble Supreme Court observed as under:-

“15. It is true that the relaxation of the time schedule in the case of one party does affect even such a person in the sense that he would otherwise have had one competitor less. But, we are inclined to agree with the respondent's contention that while the rule in Ramana case' will be readily applied by courts to a case where a person complains that a departure from the qualifications has kept him out of the race, injustice is less apparent where the attempt of the applicant before court is only to gain immunity from competition. Assuming for purposes of argument that there has been a slight deviation from the terms of the NIT, it has not deprived the appellant of its right to be considered for the contract; on the other hand, its tender has received due and full consideration. If, save for the delay in filing one of the relevant documents, MCC is also found to be qualified to tender for the contract, no injustice can be said to have been done to the appellant by the consideration of its tender side by side with that of the MCC and in the KPC going in for a choice of the better on the merits. The appellant had no doubt also urged that the MCC had no experience in this line of work and that the appellant was much better qualified for the contract. The comparative merits of the appellant vis-a-vis MCC are, however, a matter for the KPC (counselled by the TCE) to decide and not for the courts. We were, therefore, rightly not called upon to go into this question.”

11. 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. 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”*⁵, 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”*⁶ is even more instructive. There the Hon'ble Supreme Court observed that the interpretation of the tender document by the Employer of a project

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

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

may not be acceptable to the Constitutional Court but that by itself is not a reason for interference in the tender matter. 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 petitioner-Firm has not produced any scientific material or text book extract or even expert’s opinion on this aspect to demonstrate a *prima facie* case for interference in the matter. 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*”⁷, the Hon'ble Supreme Court observed that whether a term of contract is essential or not should 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.”

12. This writ petition revolves around the ground that it was excluded from participation in the financial bid on account of the

⁷ *N. G. Projects Ltd. v. Vinod Kumar Jain & Ors.*, (2022) 6 SCC 127.

intentional and biased action of the Divisional Engineer. However, the dispute raised by the petitioner-Firm 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-Firm. 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-Firm 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. 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*”⁸, 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*”⁹ wherein the Hon'ble Supreme Court observed that attempts by the unsuccessful bidders with imaginary grievances, wounded pride and business rivalry, to

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

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

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. This is not correct to say that the statements made by the petitioner-Firm in the writ petition should be accepted as no counter-affidavit has been filed by the respondents. It is for the petitioner-Firm to demonstrate a *prima-facie* case for interference. A party to the litigation which did not prosecute the matter for months altogether and is not able to make out a *prima-facie* case for interference cannot seek discretionary relief under Article 226 of the Constitution of India merely because reply-affidavit is not on record. 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.

13. Writ Petition No. 11099 of 2024 is bereft of merits and, accordingly, dismissed.

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[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]