

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.13109 OF 2024**

Mahalaxmi Automotives Pvt. Ltd. .. Petitioner

Versus

1 State of Maharashtra .. Respondents  
2 Zilla Parishad, Ratnagiri  
3 Chief Executive Officer, Zilla  
Parishad, Ratnagiri.  
4 Ramrao Balaji Dhamne  
5 Ozone Envirotech.

...

Dr.Milind Sathe, Senior Advocate with Mr.Jagdish Aradwad Reddy for the petitioner.

Mrs.Neha S. Bhide, G.P with Mr.O.A. Chandurkar, Addl.G.P and Mrs.G.R. Raghuwanshi, AGP for respondent no.1.

Mr.A.V. Pawaskar for respondent nos.2 to 4.

Mr.Nitin Gaware Patil with Mr.Divyesh Jain for respondent no.5.

**CORAM : ALOK ARADHE, CJ &  
BHARATI DANGRE, J**

**DATED : 12<sup>th</sup> FEBRUARY, 2025.**

**JUDGMENT (Per Bharati Dangre, J):-**

1 Rule. Rule is made returnable forthwith. By consent of the parties, heard finally.

2 Zilla Parishad, Village Panchayat Department, Ratnagiri, the respondent no.2 published a tender on GeM Portal on

30/8/2024 inviting bids for supply of 80 CNG operated garbage vehicles for management of solid and plastic waste in its Gram Panchayat area. The tender notice clarified that a two envelope system shall be adopted and the financial bid shall be submitted in the BOQ file which did not permit any change.

The bid document contemplated the bid offer validity of 30 days and prescribed the last date of bidding to be '19/9/2024' at 12.00 hrs, whereas the bid opening date was scheduled at 19/9/2024 at 12.30 hours. The bid document also prescribed two days time for technical clarifications during the technical evaluation. The document also set out the technical specifications for the Hopper Tipper Dumper - (version 2) for garbage use and the specifications prescribe included the general parameters, weight calculations, fabrication and design of the vehicle.

Since the respondent no.2 was to be the buyer, it had added bid specific terms and conditions, including the scope of supply as well as the operation clause. In addition, it also prescribed the turnover criteria and introduced the OEM clause.

Purchase preference was also indicated in favour of Micro and Small Enterprises from the State having valid Udyam registration and it was also specified, that if the bidder wanted to avail the benefit of reservation, it must be the manufacturer/OEM of the offered product on GeM portal and traders excluded from the purview of public procurement policy were declared to be

ineligible for participation. Benefits of MSE was allowed only if the seller is validated on-line in GeM profile and also validated and approved by buyer on evaluation of documents submitted.

**3** The bid document comprise of the following essential conditions :-

*“(i) A bidder should be either a manufacturer or a dealer of the vehicle. Should have experience of 3 years. Should have supplied at least 160 vehicles to the government / semi-government offices. Should have license for manufacture of vehicles or dealership certificate.*

*(ii) The annual turnover of the bidder should be, for the last three Financial Years 2020-21 to 2022-23 Rs.8 to 10 crores and a certificate of Chartered Accountant should be produced.*

*(iii) The supply should ensure the technical specifications as per the GeM portal*

*(iv) It will be mandatory for the bidder to supply the product of the company which has received approval and the bidder should be the original equipment manufacturer – OEM authorised and the authorised service centre for the vehicle to be supplied should be situated within a distance of 80 to 100 kms.*

In addition, the bid document published on the GeM portal prescribed the following technical specification :-

- “(i) Maximum engine power range (in KW) <+100.*
- (ii) Gross vehicle weight 1945-80,000 (kilogram).*
- (iii) Type of tipper – garbage tipper*
- (iv) Hopper, Tipper, Dumper Container capacity/ volume (cubic meters) – 1.5-20 or higher (cubic meters).”*

The generic parameters prescribed included the Vehicle Emission Compliance, Vehicle Transmission System, Air Intake System, Axle Configuration etc.

On 6/9/2024, the respondent no.2 published a corrigendum on the GeM portal to the following effect :-

*“For Grampanchayat Division of Zilla Parishad Ratnagiri, under the Urban Facilities scheme for the year 2023-24, for purchase of CNG vehicles for management of solid waste and plastic waste by the Grampanchayats, a tender notice was published on 30/08/2024 on GeM portal. It is noticed that in the said notice government approved specifications have been published. However, since no changes in government specifications are published herewith. Hence, it is necessary to supply the vehicles as per accompanying specifications. Similarly, it is necessary to supply the vehicles as per terms and conditions which have been published previously and are annexed herewith.”*

s a consequence of the aforesaid, there was change in the Gross Vehicle Weight (GVW) from 1445 – 80,000 (kg) to 1800 – 2275 kg. The type of Tipper was changed from garbage tipper to close body hydraulic operated and the vehicle dimensions were also added in the new specification which was annexed to the corrigendum.

4 The petitioner is an authorized dealer of M/s.Maruti Suzuki India Ltd for Arena, Nexa, Commercial and True Value Channel Sales, Service and Parts for the State of Maharashtra primarily engaged in the business of supply of vehicles in Pune and Ahmednagar district. The petitioner is aggrieved by the impugned tender notice published on GeM portal dated 30/8/2024 as well as the bid document dated 4/9/2024 and the corrigendum dated 6/9/2024 issued by the Zilla Parishad, Ratnagiri to the extent of the technical specification provided therein, which according to it, are intended to fit in and suit a particular party and deprive the others from participating in the

tender process. It is the case of the petitioner that the specifications suit only the vehicle of Mahindra & Mahindra Limited and is intended to exclude others who are in the business of production of the vehicles. Considering the specifications specified in form of the terms and conditions of the tender document read with the corrigendum, did not fit the vehicles which are manufactured by most of the renowned companies including Maruti Suzuki, Tata, Ashok Leyland etc, which included even the petitioner.

On 9/9/2024, Maruti Suzuki India Ltd, one of the prominent manufacturer of the vehicle addressed a letter to the CEO of Zilla Parishad, requesting for relaxation of the specifications in the GeM bid published by it, by submitting that it is a leading passenger vehicles manufacturer in India and has successfully introduced its mini truck Super Carry, in the year 2016, which has highest market share in its category. It was also stated that all the technical specifications of Maruti Suzuki Super Carry BS VI were met and some even surpassed the required specifications in the bid floated by Zilla Parishad, Ratnagiri. A request was made to review certain parameters (technical specifications) as they are restricting participations of products like Super Carry CNG and this included the gross vehicle weight, pay load, front suspension, vehicle length and deck length.

It was asserted that Super Carry CNG has more power and torque apart from its low acquisition cost and as far as the vehicle

length and deck length is concerned, it was informed that it will have no impact on the successful operation of the vehicle.

5 By taking into account the specification provided in the bid document, the petitioner formed an opinion that they are tailor made so as to suit only one party i.e. Mahindra and Mahindra Ltd, and therefore it refrained itself from participating in the process. According to the petitioner, it was evident that the specifications available on the website of Mahindra and Mahindra Ltd, in respect of Mahindra Supro Excel CNG, were picked up and included in the bid document, and therefore, on 12/9/2024, a communication was addressed by the petitioner to the CEO, Zilla Parishad, Ratnagiri airing his apprehension that the bid document intended to favour one single manufactured product and therefore, the specifications in the bid document shall be modified as many other companies would be kept away from competition.

Since no cognizance was taken of the representation of the petitioner or of the vehicle manufacturer, and since the petitioner was not in a position to upload his tender, since the vehicle for which he was a dealer did not fit into the specifications, on 18/9/2024, it filed the present writ petition, praying for quashing and setting aside the tender notice/bid document along with the corrigendum, praying for a writ of mandamus directing the CEO, Zilla Parishad, Ratnagiri to modify/change the technical specifications for supply of the vehicles in terms of the tender

notice so that other bidders who are manufacturers/suppliers of CNG operated garbage vehicles (Hopper Tipper Dumper-Version-2) can also participate. By way of interim order, stay was sought of the implementation of the impugned tender notice and it was also prayed that the CEO shall not finalise the bids submitted pursuant to the impugned tender notice.

Since the bids were to be opened on 19/9/2024 at 12.30 hours, on the petitioner approaching this Court, while issuing notice to the respondents on 19/9/2024, it was directed that if any work order is issued, the same shall be subject to further orders that may be passed in the petition.

6 The tender process was completed as the bids received were scrutinized and work order was issued in favour of one Ozone Envirotech (respondent no.5) and pursuant to the said development, on 11/10/2024, the petitioner was permitted to amend the petition by impleading respondent no.5 and also adding the necessary pleadings to raise a challenge to the award of contract in its favour.

While the amendment was allowed on 11/10/2024, this Court recorded as below:-

*“6 It has been argued by Mr.Milind Sathe, learned senior counsel representing the petitioner that the screenshot of the information available on the portal reveals that on 29<sup>th</sup> September, 2024 at 5.22 p.m, out of eight bidders only one, namely Ajil Fibertech had qualified in the bid process and rest of the bidders have been depicted in the said information as disqualified, however, the information available on the web portal on 10<sup>th</sup> October, 2024 shows that out of eight participants, four were disqualified and four had qualified in the bid process, including Ozone Envirotech, which firm is shown to have been disqualified on 29<sup>th</sup> September, 2024. The submission is that the*

*tender has been allotted, now to Ozone Envirotech, which was initially shown to have been disqualified on 29<sup>th</sup> September 2024. In these facts, the submission of Mr.Milind Sathe is that the tender process undertaken by the respondent – Zilla Parishad cannot in any manner be said to be fair. Mr. A.V. Pawaskar representing the Zilla Parishad has, however, stated that initially certain participants were declared to be disqualified, however, they were granted opportunity to remove the defects/overcome the shortfall and in re-evaluation the bidders were found to have qualified, including Ozone Envirotech.*

*7 If that is the process adopted by the respondent – Zilla Parishad, such a process adopted by the Zilla Parishad, prima facie appears to be unfair; inasmuch as once a participating firm is declared to have disqualified, giving opportunity to such a firm to remove the defects etc. does not appear to be a proper course. Such opportunity has to necessarily precede the evaluation and it is not that the evaluation should precede the opportunity. For the said reason, as an interim measure, it is directed that till the next date of listing, the impugned work order shall not be given effect.”*

7 Upon the notice being issued, the respondent nos.2 to 4 as well as respondent no.5 filed their respective affidavits in reply.

The respondent nos.2 to 4 raised a preliminary objection that the petitioner never participated in the tender process and the eight bidders who participated, had presented Ashok Leyland and Mahindra vehicles and hence, it was urged that there was no question of any restriction on a competition and in fact, to establish its fairness, it is also submitted that the system generated shortfall of 2 days (48 hours), has been given to all the bidders to afford a second chance to rectify their errors, and it was thus attempted to be explained, that though on the first take, only one bidder was shown to be qualified, but after 48 hours, out of eight, four have been qualified and four being disqualified. It is further clarified that the disqualification was not due to technical specification of the vehicle but for administrative reasons, which

recorded that the tender was reserved for MSME Industry and either the tenderer had not submitted some document or did not present the vehicle. It is thus urged that four out of eight bid received in technical envelope, after two days of technical qualification, as per GeM portal qualified themselves, out of whom one i.e. Ozone Envirotech was issued the supply order through GeM portal on 4/10/2024.

8 We have heard learned Senior Counsel Dr. Sathe, in support of the petitioner who supported the reliefs in the petition by advancing his submission on the following points:

- (i) The specifications prescribed in the tender notice/bid document are tailor made to suit only one manufacturer
- (ii) The process adopted by the respondent no.2 is not transparent.
- (iii) Though the petitioner did not participate as his bid document ought to have been rejected in the wake of the technical specification specified, but before the bids were opened, he had knocked the doors of this Court, praying for cancellation of the tailor made technical stipulations in the tender notice and praying for a restrain order against the respondents from proceedings with the tender.
- (v) The respondent no.5 who is declared as a successful bidder was favoured being the dealer of Mahindra and Mahindra Co. as the bid conditions were tailor made to suit the technical eligibility specifications. Dr. Sathe has placed reliance on a

comparative chart of the vehicle description – requirement as per the bid document and that of Mahindra Supro Excel CNG and on comparison of the same, which is placed at Exhibit-D to the petition, we find that in all technical aspects, Mahindra Supro Excel CNG perfectly fit in and we reproduce the said chart below

| Vehicle description – Requirement as per BID Document |                                                                                            | Mahindra Supro Excel CNG Duo                          | Matching Spec. |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------|----------------|
| <b>Engine</b>                                         |                                                                                            | <b>Engine</b>                                         |                |
| Type                                                  | 2 to 3- Cylinder, 694 to 1199 CC                                                           | 2- Cylinder, 909 cc                                   | Yes            |
| Max.power                                             | CNG-19.4 To 39.82 kw @ 3800 to 4000 r/min                                                  | 20.01 kw @ 3800 R/Min                                 | Yes            |
| Max. Torque                                           | CNG-58 & above Nm@ 1800 to 2500 r/min                                                      | 60Nm @ 2000 R/Min                                     | Yes            |
| Max.Gradeability                                      | 10% & above                                                                                | 10% & above                                           | Yes            |
| Vehicle Mileage                                       | 23 & above                                                                                 | 23.35 Km/Kg                                           | Yes            |
| Payload Capacity                                      | 750 kg & above                                                                             | 750 kg                                                | Yes            |
| Range                                                 | 322 km & above                                                                             | 325 Km                                                | Yes            |
| Vehicle Emission Compliance                           | BS VI (OBD2- On- Board Diagnostic II)                                                      | BS VI (OBD2- ON- Board Diagnostic II)                 | Yes            |
| Fuel Tank                                             | CNG Cylinder Capacity 70 to 80 L Petrol Tank Capacity 5 L & above                          | 75 L (Cng) & 5L (Petrol)                              | Yes            |
| <b>CLUTCH AND TRASMISSION</b>                         |                                                                                            | <b>CLUTCH AND TRASMISSION</b>                         |                |
| Clutch                                                | Hydraulic or Single plate dry friction diaphragm type                                      | Hydraulic or Single plate dry friction diaphragm type | Yes            |
| Gear Box Type                                         | GBS 65-5/5.6 Or 4 speed Synchromesh Forward, sliding Mesh Reverse ( 4 Forward & 1 reverse) | 4 Forward & 1 reverse                                 | Yes            |
| <b>BRAKES</b>                                         |                                                                                            | <b>BRAKES</b>                                         |                |
| Brakes                                                | Front-Disk Brakes                                                                          | Front-Disk Brakes                                     | Yes            |
|                                                       | Rear- Drum Brakes                                                                          | Rear- Drum Brakes                                     | Yes            |
| <b>SUSPENSION</b>                                     |                                                                                            | <b>SUSPENSION</b>                                     |                |
| Type                                                  | Front- Multi Leaf Spring or Parabolic leaf spring or semi Elliptical Leaf Spring           | Front- Multi Leaf spring                              | Yes            |
|                                                       | Rear- Multi Leaf spring or Semi-Elliptical Leaf Spring                                     | Rear- Multi Leaf spring                               | Yes            |
| <b>WHEELS &amp; TYRES</b>                             |                                                                                            | <b>WHEELS &amp; TYRES</b>                             |                |
| Tyres                                                 | 145 to 165 R 12 to 14 Lt 8 PR Radial                                                       | 145 R12 8 PR Radial                                   | Yes            |

| VEHICLE DIMENSIONS (MM)    |                                             | VEHICLE DIMENSION (MM) |     |
|----------------------------|---------------------------------------------|------------------------|-----|
| Length                     | 3900 to 4460 mm                             | 3927 mm                | Yes |
| Width                      | 1500 to 1692 mm                             | 1540 mm                | Yes |
| Height                     | 1840 to 1921 mm                             | 1900 mm                | Yes |
| Wheelbase                  | 1900 to 2450 mm                             | 1950 mm                | Yes |
| Ground Clearance           | 158 to 175 mm                               | 158 mm                 | Yes |
| Cargo Box Dimension        | 2250 to 2690 * 1490 to 1620 * 300 to 400 mm | 2285* 1540*330 mm      | Yes |
| Max turning Circule Radius | 4800 to 5250 mm                             | 5.2 m                  | Yes |
| WEIGHTS                    |                                             | WEIGHTS                |     |
| Max. GVW                   | 1800 to 2275 kg                             | 1850 kg                | Yes |

9 Dr.Sathe has also placed before us a comparative chart of the vehicles belonging to Maruti Suzuki, Tata, Mahindra and Ashok Leyland as against the specifications set out in the bid document in terms of Gross Vehicle Weight, pay load, deck length/width (mm), cylinders, power (HP) torque, gradability, fuel tank capacity, fuel economy, ground clearance, etc and we find that the specifications of the vehicle belonging to the four companies are at little variance and therefore, when we turn to the chart reproduced above, it is easily possible to derive a conclusion that the specifications in the bid document are brought closer to their presence in Mahindra Super Excel CNG Duo.

10 Mr.Sathe has also attempted to establish that the process adopted by the tendering authority was not transparent as the

screen shot on the GeM Portal of 4/9/2024, 11.22 am has disqualified seven bidders and only qualified one bidder with make Mahindra, but another snapshot has shown four bidders to be qualified being ranked as L1, L2, L3 and L4, Ozone Envirotech being reflected as 'L1'.

The case of the petitioners is not only the tender conditions were arbitrary as they were intended to favour vehicles manufactured by a particular company by keeping all other bidders out of the competition but even the tender process was faulty, as it lacked transparency and consistency.

11 Learned counsel Mr. Pawaskar for the Zilla Parishad Ratnagiri was unable to justify that the specifications were modified to bring it in consonance with the one specified by the government and on the other hand, he urged before us that the process followed by respondent no.2 was on the GeM portal and was as per the specifications prescribed by the Government. According to him, the petitioner did not participate in the tender process and therefore, had no locus to challenge the tender conditions and he would place reliance upon the decision of the Apex Court in case of **National Highways Authority of India vs. Gwalior-Jhansi Expressway Limited**<sup>1</sup> with following observations therein :-

*"7. Hon'ble Supreme Court in the case of National Highways Authority of India vs. Gwalior-Jhansi Expressway Limited, reported in (2018) 8 SCC 243 has held as under:-*

*'20. ....Having failed to participate in the tender process and, more so, despite the express terms in the tender*

---

<sup>1</sup> (2018) 8 SCC 243,

*documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent 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. At the culmination of the tender process, if the respondent had not participate, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. ....”*

The learned counsel Mr. Nitin Patil representing the respondent no.5 attempted to justify the process adopted by respondent no.2, by submitting that the petitioner had every opportunity to raise a query to the technical specification and obtain clarification as he would submit that the bid document clearly specified that if any seller has any objection/grievance against the additional clause or otherwise or any aspect of the bid, they can raise representation against the same, by using the window provided in bid details in seller dash board after logging in as ‘seller’ within four days of bid publication on GeM and the buyer is duty bound to reply to all such representation and would not be allowed to open bids in case if he fail to reply. Attempting to explain the difference in the two screen shots on which the petitioner has harped upon, Mr.Patil would submit that there was two days window for the bidders to raise objection and that is why there is a change in the bids shown to be technically qualified, but in any case, since the petitioner did not submit its bid, he is not entitled to make any

grievance. In addition, he would submit that Maruti Suzuki, the manufacturer of the vehicle of which the petitioner is a dealer did not however, file any petition or raise challenge to the tender condition and therefore, the petition at the behest of the petitioner need not be entertained.

**12** We have perused the bid document published by the Zilla Parishad, Ratnagiri, inviting bids for supply of 80 Hopper Tipper Dumper (Version-2) with the technical specifications set out therein. The specification include the generic parameters including the weight calculations, fabrication and designing as well as the Engine Power Range with the limited power scope available to us, while dealing with the challenge raised to the tender conditions and in particular to the specifications of the vehicles prescribed in the bid document, we are conscious of the fact that we are not expected to interfere in the same as the tendering authority is the best judge to set out what it wants in a vehicle which is to be used for the purpose of transportation of garbage. The scope of our judicial review only permit us to check whether the choice of decision is made lawfully and not to check whether the same is sound.

We are guided by the following observations of the Apex Court in **Jagdish Mandal Vs. State of Orissa**,<sup>2</sup> “Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some

---

<sup>2</sup> (2007) 14 SCC 517

technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted”.

The scope of permissible judicial review would, however, permit us to test the decision making process though not the decision itself. The authority issuing the tender, is the best person to understand and appreciate its requirement and needs, and we may not find any fault in it setting out the technical specifications, but in exercise of the power of judicial review, we definitely find ourselves competent to examine whether the terms and conditions of the tender have been tailor made to suit a person/entity.

It is the specific contention of Dr. Sathe on behalf of the petitioner that the tender was floated to favour only a particular make of the vehicle and in fact, the petitioner was unable to participate in the process on account of the specific stipulations and automatically, the respondent no.5 fitted into the specifications, because it was only its vehicle which could satisfy the technical specifications in the tender notice. We are called upon to decide whether the process adopted by the Zilla Parishad, Ratnagiri, is malafide, since it is intended to favour a particular bidder and whether the public interest is affected by prescribing tailor made condition.

**13** Dr.Sathe has placed before us a comparative chart of the specifications set out in the tender, as regards the technical

capacity of vehicles to be supplied, and when *juxtaposed* against Mahindra Supro Excel CNG, the vehicle furnished by respondent no.5, we find the latter to be perfectly fitted with the specifications in the bid document, as regards the gradeability, vehicle mileage, Payload capacity, range and with a slight variation in the maximum power/maximum Torque, in respect to the Clutch and transmission as well as brakes, suspension, wheels and tyres, the specifications are in complete tune, though as regards the vehicle dimensions, one can find a slight variation. The same situation exist in respect of weight, as the tender document has specified the maximum GVW as 1800 – 2275 kg, whereas Mahindra Supra has the maximum GVW of 1850 kg.

On comparison of the specifications prescribed in the bid document and that possessed by the vehicle of respondent no.5, it cannot be just a coincidence that the similarity is so starking.

**14** On going through the process that was adopted for selecting the successful bidder in terms of the specifications set out in the Tender Notice/Bid Document to be read with the corrigendum published on 6/9/2024 stating that “the specifications published in the said tender are as per specifications approved by the Government”, when the tenders were opened on 19/9/2024, out of eight, seven bidders were declared disqualified. This included respondent no.5, which however, was subsequently treated as ‘eligible’. Out of the eight participants, one vehicle offered was Tata Intra V2O CNG and another vehicle was Ashok

Leyland Dost CNG. The qualified bidders are dealers of Mahindra Supro CNG vehicle only. All the qualified bidders are suppliers of Mahindra vehicle and this is clearly indicative of the intention to eliminate the competition, as the design specifications were so close to the one possessed by Mahindra vehicle which gave rise to a strong suspicion in the mind of the petitioner that the condition was tailor made and intended to favour a particular manufacturer.

**15 In National High Speed Rail Corporation Limited Vs. Montecarlo Limited & Anr,**<sup>3</sup> the Apex Court has formulated the twin test before a Writ Court interfere in a contract matter, in exercise of its power of judicial review, the questions falling for determination being; (i) whether the process adopted or decision made by the authorities is malafide 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 reasonable authority acting reasonably and in accordance with the relevant law could have reached?” and (ii) whether the public interest is affected?

After due deliberation on the scope of judicial review in the realm of public Law and Writ remedies in relation to government contracts and tenders, it is held that, if the answers to the above question are in the negative, then there should be no interference in exercise of power under Article 226 of the Constitution of India.

---

3 (2022) 6 SCC 401

**16** Applying the two fold test, when we have examined the technical specifications in the tender and the manner in which the respondent has conducted itself. Since we have noted that out of eight bidders, the four which qualified, had bidden for vehicles of Ashok Leyland and Mahindra only, and the petition was permitted to be amended in the wake of the subsequent events reflecting that on the GeM portal, the information which was uploaded on 29/9/2024 had shown only one bidder to be qualified and rest of them were disqualified including respondent no.5. On the other hand, on the portal, four bidders were shown to be qualified including the respondent no.5 on 10/10/2024 and it also reflected that the work order was already issued to respondent no.5 on 4/10/2024, though the information was uploaded only on 10/10/2024.

Along with the affidavit in reply, the work order is produced before the Court and it is dated 4/10/2024 and we did not get any satisfactory explanation from the respondents about this goof-up, but instead, we find that the respondent has raised objection to the eligibility of the petitioner to call the entire process in question by questioning its locus. In the affidavit in reply filed by the respondents, in an attempt to explain the aforesaid accusation, it is categorically stated that eight bidders had submitted the bids but in order to have maximum competition from the participating bidders, opportunity was given to rectify the error by giving chance for clarification as per

the rules of GeM Portal and all the tender holders were given second chance to rectify their error by giving an additional period of two days. This is how it is sought to be explained to us that three bidders who were disqualified on 29/9/2024, after this opportunity, were declared as qualified on 10/10/2024.

17 We find the entire approach of the respondent Zilla Parishad arbitrary as there was no question of giving any relaxation and opportunity to improve upon the prescribed qualifications and in fact, if seven bidders were shown to be disqualified on 29/9/2024, we fail to understand what prompted the respondent to qualify three more bidders and reflect on the website that four bidders were qualified, but worth it to note that the work order was issued in favour of respondent no.5 on 4/10/2024 itself, as it was found to be 'L1' who had quoted the price of ₹ 65,816,000.00, the whole process thus smacks of arbitrariness and though we have already indicated that we are not showing indulgence because we find that the technical specifications are unreasonable, but we are satisfied that the entire process adopted by the respondent is irrational and malafide leading to an inference that the whole process was aimed at favouring respondent no.5. As far as the decision in case of **Khemchand Vs. Union of India (WP No.3120 of 2024)** is concerned, the petitioner was non-suited on the ground that he was not a participant in the tender process and therefore, it was held that it was not open for him to challenge the tender

conditions at that stage. However, in the present case, the petitioner cannot be non-suited as he had approached the Court before the tenders/bids were opened as he found himself to be unable to participate in the process on account of the conditions stipulated therein. Since we find that the process adopted by Zilla Parishad is non-transparent, we do not find any legal embargo in the petitioner in approaching this Court being aggrieved by the tender conditions and before the process itself was set into motion and since this Court on 19/9/2024 itself clarified that if any work order is issued, the same shall be subject to further orders that may be passed in the Writ Petition.

As a result of the above discussion, the Writ Petition is allowed by setting aside the work order and contract dated 4/10/2024 issued in favour of respondent no.5. It is open for the respondent to issue a fresh tender so that it can have a participation of more bidders with competitive spirit.

Writ Petition is made absolute in the aforesaid terms.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)