

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date: 2025.06.25
10:55:25 +0530

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

WRIT PETITION NO.18859 OF 2024

BVG India Ltd. Through its Assistant
General Manager Pratik Muley

... Petitioner

V/s.

The Chief Rolling Stock Engineer,
Central Railways, CSMT and Ors.

... Respondents

Mr. Ashutosh M. Kulkarni i/b. Mr. Sarthak S. Diwan, for the Petitioner
Mr. T.J. Pandian with Prajakta Joshi, Gautam Modanwal and
Noorjahan Khan for Respondent Nos. 1 to 3

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

DATE : 24 JUNE 2025

Order (Per Chief Justice) :

1. With consent of learned Counsel for the parties, the Writ
Petition is heard finally.

2. This Writ Petition is directed against the impugned
decision taken on 25 November 2024 by which the Petitioner has been
held to be disqualified in technical evaluation and this bid has been
held to be non- eligible. In order to appreciate the grievance of the
Petitioner, the relevant facts need mention which are stated infra.

3. The Chief Rolling Stock Engineer of Central Railway issued tender notice for mechanized cleaning, watering of rakes including cleaning of depot premises and for providing on board housekeeping services in trains at Lokmanya Tilak Terminus Coaching Depot of Mumbai Division. The estimated value of the contract was Rs. 199,43,67,858/-. Clause 2A of the Notice Inviting Tender which deals with Minimum Eligibility Criteria with regard to work experience reads as under :-

“2. Minimum Eligibility Criteria :

(The below mentioned eligibility criteria shall prevail over the eligibility criteria mentioned in GeM Bid document)

A. Work Experience: The bidder should have satisfactorily completed* in the last three previous financial years and the current financial year up to the date of opening of the tender, one similar single service contract** for a minimum of 35% of advertised value of the bid.

****Completed service contract*** includes on-going service contract subject to payment of bills amounting to at least 35% of the advertised value of the bid.

***** Similar service contract means: “Mechanized cleaning of coaches in any of the coaching depots of Indian Railways.***

AND/OR

Mechanized en-route cleaning of trains during their stoppage Railway stations under the “Clean Train Station” scheme

AND/OR

Providing “On Board Housekeeping Services on trains”

AND/OR

“Mechanized cleaning of stations in Indian Railways”

AND/OR

“Mechanized cleaning activity carried out in public listed company/private company/Trusts having annual turnover

of Rs.500 crore and above subject to the credential being issued from their Head Office by a person of the company duly enclosing his authorization by the Management for issuing such credentials”

AND/OR

“Mechanized cleaning activity carried out in Airports, Metro-Rail Systems, Central/State Government establishments, Central/State Govt. PSUs”.

4. Clause 2.6.2.1.1 with regard to Special Conditions of Contract reads as under :-

<i>Clause No. of GCC for Services</i>	<i>Conditions as mentioned in GCC for Services</i>	<i>Modified as under</i>
<i>2.6.2.1.1</i>	<i>The bidder shall submit along with the bid document, documents in support of their claim to fulfill the minimum eligibility criteria as mentioned in the bid. In two packet system of bidding, each bidder shall be assigned score for their technical bid. The score of technical bid should be more than or equal to minimum qualifying marks as mentioned in bid document. The system of assigning score shall be as per the bid document.</i>	<i>The bidder shall submit along with the bid document, documents in support of their claim to fulfill the minimum eligibility criteria as mentioned in the bid. In two packet system of bidding, each bidder shall be assigned score for their technical bid.</i> <i>In case the bidder has completed a work which comprise of “similar nature of work” as a part of composite work, then he should furnish the value of component of similar nature of work for evaluating the eligibility, failing which his offer shall be summarily rejected.</i> <i>The system of assigning score shall be as per Clause-3 (C) of the bid</i>

document. Bidders who's score shall be 70 or above (as per Clause-3 (C) shall be qualified for consideration of their financial bids. Bidders who do not meet the minimum qualifying score of 70 shall not be considered further for opening of their financial bids and their bids shall not be considered further for award of the tender."

5. The Petitioner, on 16 August 2024 submitted its OnLine bid alongwith two certificates of experience in relation to the eligibility criteria. The Petitioner had annexed a certificate dated 25 July 2024 issued by the Commissioner of Social Welfare, Pune as well as certificate dated 6 June 2024 issued by the Senior Depot Officer, Integrated Coaching Depot, Wadi Bunder, Central Railway, Mumbai. On 3 September 2024 a clarification was sought from the Petitioner with regard to the experience certificate issued by the Petitioner dated 25 July 2024. The Petitioner, on 4 September 2024 submitted a response stating that the work mentioned in the experience certificate dated 25 July 2024 is a composite work in providing services of mechanized housekeeping and submitted all the documents. However, the bid submitted by the Petitioner was rejected on 25 November 2024 on the ground that the experience certificate dated 25 July 2024

submitted by the Petitioner was found to be misleading as the same indicated execution of composite work without segregating the portion of work for mechanized cleaning with works of other nature. In the aforesaid factual background, this Petition has been filed.

6. The learned Counsel for the Petitioner submitted that even if the experience certificate dated 25 July 2024 submitted by the Petitioner is discarded, the Competent Authority of the Central Railway was under an obligation to consider the other certificate dated 6 June 2024 issued by the Senior Depot Officer, Integrated Coaching Depot, Wadi Bunder, Central Railway, Mumbai. It is contended that on perusal of the experience certificate dated 6 June 2024, the Petitioner fulfills the eligibility criteria laid down in the notice inviting tender. It is also contended that the Petitioner is the lowest bidder and the difference between bid of the Petitioner and Respondent No.4 is to the tune of Rs.7.00 crores.

7. On the other hand, the learned Counsel for Respondent Nos. 1 to 3 submitted that Petitioner gave misleading information to the tendering authority claiming that the entire work covered by certificate dated 25 July 2024 was in respect of mechanised housekeeping, when infact another certificate in respect of the same

work indicated that mechanised housekeeping was only a part of the work performed by Petitioner in addition to works of other nature. That Petitioner's falsehood came to light only after complaints were received against him. However, the learned Counsel was unable to point out from the record that the certificate dated 6 June 2024 has been considered by the Competent Authority while evaluating the technical bid of the Petitioner. It is pointed out that during the pendency of the Writ Petition, the work order has already been issued in favour of Respondent No.4 and Respondent No.4 has started the execution of the work awarded. However, it is submitted that the aforesaid work order has been made subject to outcome of the Petition.

8. Respondent No.4 was served with the notice. Initially, Ms. Bhansali, learned Counsel appeared on behalf of Respondent 4 on 27 January 2025. However, on the last date of hearing she reported no instructions. Thus, despite of service of notice and despite being represented by an Advocate, the Respondent No.4, successful bidder has failed to file an affidavit in reply.

9. We have considered the submissions made by the learned Counsel for the parties and have perused the record.

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***.

11. In the backdrop of aforesaid well settled legal principles, we may advert to the facts of the case in hand. In the instant case, the Petitioner has annexed a certificate dated 6 June 2024 issued by the Senior Depot Officer, Integrated Coaching Depot, Wadi Bunder, Central Railway, Mumbai. No doubt, the tendering authority has power to lay down the minimum eligibility criteria and to take a decision whether particular tenderer fulfills the eligibility criteria. However, the aforesaid decision has to be taken in a fair and just manner and on consideration of the entire documents tendered by the

tenderer. In the instant case, the tendering authority admittedly has not taken into account the certificate dated 6 June 2024 issued by the Senior Depot Officer, Integrated Coaching Depot, Wadi Bunder, Central Railway, Mumbai while rejecting the technical bid of the Petitioner. Petitioner relied on two certificates in support of its claim of eligibility. It is not that the certificate dated 25 July 2024 issued by Commissioner of Social Welfare, Pune has turned out to be false. The certificate is genuine, but is found to be in respect of composite work without segregation of element of mechanised housekeeping. This however would not mean that the tendering authority would altogether ignore the other certificate dated 6 June 2024 issued by Railways themselves.

12. We are conscious of the fact that during the pendency of the Writ Petition, the tender in question has already been awarded and a work order has been issued. Therefore, in the facts and circumstances of the case, we deem it appropriate to issue the following directions :-

(i) The communication/decision dated 25 November 2024 issued by the Chief Rolling Stock Engineer, Central Railway, CSMT, Mumbai, by which the Petitioner has been disqualified on the technical evaluation is quashed and set aside.

(ii) The Competent Authority of Central Railway is directed to consider the experience certificate dated 6 June 2024 annexed by the Petitioner and to assess the eligibility of the Petitioner with regard to technical bid submitted by the it.

(iii) In case, the Petitioner is found to be technically eligible, the price bid of the Petitioner shall be opened by the Competent Authority of the Respondent and a suitable decision in accordance with law shall be taken.

(iv) The aforesaid exercise shall be completed within an outer limit of four weeks from today.

13. Accordingly, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)