

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

PUBLIC INTEREST LITIGATION NO. 62 OF 2024

BASAVRAJ
GURAPPA
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Contract for Emergency Medical Services ... Petitioner

V/s.

The State of Maharashtra and Ors. ... Respondents

**WITH
WRIT PETITION NO. 13113 OF 2024**

Sumeet SSG BVG Mahanagar EMS Pvt. Ltd.

Through Authorized Representative

S. Sowale ... Petitioner

V/s.

The State of Maharashtra and Ors. ... Respondents

**WITH
INTERIM APPLICATION NO. 12541 OF 2024
IN
PUBLIC INTEREST LITIGATION NO. 62 OF 2024**

Sumeet Facilities Ltd. ... Applicant

V/s.

Contract for Emergency Medical Services ... Respondent

**WITH
INTERIM APPLICATION NO. 12592 OF 2024
IN
PUBLIC INTEREST LITIGATION NO. 62 OF 2024**

Vikas Sadashiv Lawande ... Applicant

V/s.

Contract for Emergency Medical Services
and Ors. ... Respondents

Mr. Vyankatesh Dhond, Senior Advocate – *Amicus Curiae*

Mr. Ravi Kadam, Senior Advocate with Mr. Seoul Shah, Chinmay Patil and Siddharth Chavde for the Petitioner in WP/13113/2024 and for Respondent No.7 in PIL No. 62/24

Dr. Birendra Saraf, Advocate General with Mrs. Neha S. Bhide, Govt. Pleader with Mr. O.A. Chandurkar, Additional Government Pleader with Mr. Kushal Amin, 'B' Panel Counsel with Ms. G.R. Raghuwanshi, AGP for Respondent Nos. 1 to 4 in WP/PIL

Mr. Ashutosh A. Kumbhakoni, Senior Advocate with Mr. Ashutosh M. Kulkarni i/b. Mr. Sarthak S. Diwan for Respondent No.6 in PIL

CORAM: ALOK ARADHE, CJ. & M.S.KARNIK, J.

RESERVED ON : APRIL 4, 2025

PRONOUNCED ON : APRIL 8, 2025

JUDGMENT (PER : CHIEF JUSTICE)

Rule. Rule is made returnable forthwith. By consent of the learned counsel for the parties, heard finally.

(A) CHALLENGE:

2. The subject matter of PIL is a tender viz. tender bearing No.Ref No.E-08/MEMS/23-24 dated 4th January 2024 issued by the Commissioner, Health Service and Mission Director, National

Health Mission, Mumbai for design, build, finance, operate and transfer (PPP-DBFOT Hybrid Model) Maharashtra Emergency Medical Services (MEMS) Project 2024 **(subject tender)**. The challenge in this petition is to the subject tender as well as the Government Resolution dated 15th March 2024 issued by the Secretary, Public Health Department, State of Maharashtra. A direction is sought to conduct a full-fledged inquiry, with regard to the illegal transactions leading to the subject tender as well as the subsequent transactions which led to Government Resolution dated 15th March 2024. In addition, a direction is also sought to issue guidelines for award of MEMS project and to lay down standard guidelines pertaining to supply of manpower. The successful tenderer viz. the consortium has filed writ petition No.13113 of 2024 seeking a direction to respondent Nos.1 to 4 to forthwith execute the concessionaire agreement with the petitioner as per the terms of the Letter of Allotment dated 15th March 2024. The PIL and the writ petition arise out of the same tender, therefore, same were heard analogously and are being decided by this common order. In order to appreciate the grievance of the petitioners, relevant facts need mention which are stated infra.

(B) FACTS:

3. The Government of Maharashtra, in the year 2011, with intent to launch Maharashtra Emergency Medical Services (MEMS) with a fleet of 937 life support ambulances (Advance Life Support-235 & Basic Life Support-702) on Turnkey basis, floated a tender to develop and operate Emergency Response Service/Ambulance Service for providing an emergency response

ambulance service. BVG India Ltd. was awarded the contract for a period from 1st February 2014 to 31st January 2019. On expiry of the period of contract, the same was extended from time to time for a period from 1st February 2019 to 31st January 2024.

4. The Commissioner, Health Services to the Public Health Department, on 3rd April 2023, sent a proposal to the Public Health Department seeking approval for procurement of different types of ambulances along with medical equipments and information technological hardware/software with a view to upgrade the already existing infrastructure. The State of Maharashtra is required to follow the guidelines issued by the National Health Mission Conditionalities Framework 2022-24. Taking into consideration the said norms, the State of Maharashtra was in need of total 1529 ambulances. An expert committee for Bio-Medical Equipment Specifications, consisting of Director, Health Services as Chairman with members from Professor and HOD Surgery Department and HOD Medicine Department from Sir JJ Hospital, Mumbai, Joint Director Hospital Section, Project Director Emergency medical services, Joint Director Procurement, Civil Surgeon, Thane and Orthopedic Surgeon from Thane Civil Hospital was constituted. The expert committee, comprising of Deputy Director, Transport, Members from Central Institute of Road Transport (CIRT), Civil Surgeon, District Hospital-Pune, District Health Officer-Pune, Deputy Director Automobile Research and Association of India (ARAI), Regional Transport Office, Pune (RTO), Professor of Mechanical Engineering from (College of Engineering, Pune) Marine Engineer and main surveyor Maharashtra Maritime Board Mumbai was

formed and the said committee laid specifications of Type C Basic Life Support (BLS) Ambulances, Two-Wheeler Scooters which need to be upgraded and procured for new MEMS tender. Another expert committee of Director of Health Services, Mumbai as Chairman with members from Under Secretary Department of Information and Technology, Head of Department Information Technology from VJTI Mumbai, Senior consultant Information Technology National Health Mission Mumbai, Joint Director Hospital Section, Project Director Emergency Medical Services, Joint Director Procurement was constituted for information technology specifications of hardware and software for the new MEMS project.

5. The State Government, vide Government Resolution dated 16th June 2023 constituted a committee of 13 members (**tender Committee**) to finalize the tender process and to draft the tender document and to scrutinize the technical as well as financial tender aspects with regard to the appointment of new service provider for conducting the MEMS project across the State of Maharashtra. An expert committee for information technology specifications of hardware/software was also constituted. After receiving and collating all the information and data from all the aforesaid three expert committees, the same was forwarded to the tender committee. The tender committee drafted and finalized the request for proposal document. The Cabinet, in its meeting held on 21st July 2023, decided to conduct and operate MEMS a new service provider would be appointed for 10 years on public private partnership (PPP) basis and financial as well as technical approval was accorded.

6. The State Government, on 4th August 2023 issued a Government Resolution approving an annual expenditure of Rs.759,56,51,190/- (Rs. Seven Hundred Fifty-Nine Crores Fifty-Six Lac Fifty-One Thousand One Hundred Ninety only) for around 1786 life support ambulances and laid down basic terms and conditions to be followed with the help of officers of Public Health Department. Thereafter, certain changes were made in the draft tender conditions by the tender committee. The tender document dated 12th September 2023 was uploaded on Maharashtra e-portal website inviting bids for MEMS services. The date of commencement of the tender document was 12th September 2023 and the date of pre-bid meeting was 18th September 2023. The last date for sale of tender document and submission of tender was 5th October 2023. The date of opening of the bid was extended several times upto 28th December 2023. A pre-bid meeting was held on 18th September 2023 as per the tender schedule in which as many as 64 participants participated and raised around 697 queries/suggestions. No bids were received till 4th October 2023. Therefore, the Department decided to extend the last date of bid submission upto 16th October 2023 and thereafter several corrigendums to the tender document between the period from 4th October 2023 to 21st December 2023 were issued. On account of technical glitch, the corrections with regard to the EMD was not getting uploaded on the web portal. The validity of tender was till 28th December 2023 and on account of software used by the web portal, the tender disappeared from MAHATENDER web portal on 28th December 2023.

7. The Commissioner, Health Service and Mission Director, National Health Mission, Mumbai decided to issue fresh tender i.e. the impugned tender while incorporating all the corrigendums and therefore, no provision for pre-bid meeting was envisaged. A fresh tender, which was the same tender, was uploaded on 4th January 2024 pursuant to which no bid was received. Therefore, the last date for submission of the bid was extended upto 23rd January 2024 and finally, upto 24th January 2024. On 24th January 2024, a consortium, comprising of Sumeet Facilities Ltd., BVG India Ltd. and SSG Transporte Sanitario submitted its bid. The tender committee decided to open the said bid. The tender committee, between the period from 31st January 2024 to 22nd February 2024, opened the technical and financial bid of the consortium. The tender committee found that estimates for operational expenses and capital expenditure were 20.47% and 64.99% higher than the share approved on 4th August 2023. The consortium was, therefore, invited for negotiations. The Committee, after two rounds of negotiations, concluded that higher capital expenditure was because of comparison of the same which was based on the old rates. The Committee, therefore, resolved to take an administrative approval on revised rates from the competent authority. The competent authority, on 15th March 2024 issued an administrative approval. The contract was awarded to the consortium on 15th March 2024.

8. This PIL was filed after a period of one month from the date of award of contract of the consortium i.e. on 18th April 2024 by one Mr. Vikas S. Lawande. A division bench of this Court

on 7th May 2024 interacted with aforesaid Mr. Vikas S. Lawande and during the course of interaction he admitted that he is a farmer and his yearly income is between Rs.50,000/- to Rs.1,00,000/-. It was further admitted by him that he is a political worker associated with a political party. A Bench of this Court, therefore, passed the following order on 7th May 2024:

1. Pursuant to our order passed yesterday, i.e., 6th May, 2024, the petitioner is present in person. We have interacted with him and made certain queries. He admits that he is a farmer and his yearly income varies from Rs.50,000/- to Rs.1 lakh. He has also admitted that he is a social as also political worker associated with a political party.

2. In the writ petition, the petitioner has stated that the expenses of this PIL petition, including the lawyer's fee is being borne by the petitioner. When the Court inquired from him as to what was the fee paid to Mr. S. Bhuvan Chandu, said to be a Cyber Forensic Expert who has submitted a report on affidavit, the petitioner submits that the said Forensic Expert was engaged through one of his lawyer friends.

3. Learned Advocate General has, however, doubted the credentials of the petitioner and has submitted that the renewed tender process was initiated in the month of January, 2024 and if any party intending to participate in the tender process was aggrieved in any manner with the tender conditions, it was for the said party to have challenged the same by instituting appropriate proceedings, however, except for one writ petition, namely, Writ Petition (L) No. 786 of 2024, no other challenge to the tender conditions has been made by any other tenderer or party intending to participate in the tender process. He has further stated that after finalization of the tender process, the work order has also been issued on 15th April, 2024, whereas this PIL petition has been filed in the Registry on 16th April, 2024 and, thus, according to the learned Advocate General, the time chosen for filing this petition, which is camouflaged as a PIL, itself dis-entitles the petitioner to seek any relief from this Court by instituting the present proceedings.

4. Having regard to the overall facts and circumstances of the case, we are of the opinion that cognizance of the issues raised in the PIL petition should be taken but not at the instance of the petitioner.

5. Accordingly, Office is directed to recast the cause title of this PIL petition by removing the petitioner from the array of parties. The Office shall register this PIL petition with the following cause title:

"In Re: Contract for Emergency Medical Services."

6. We request Shri Venkatesh Dhond, a Senior Advocate practicing in this Court, to assist the Court in the matter as Amicus.

7. Office is directed to provide a complete copy of the paper book of this PIL petition to Shri Dhond within a week.

8. Let the notices be issued to the respondents, returnable on **26th June, 2024**.

9. On behalf of the respondent nos.1 to 4, learned Advocate General, assisted by learned Government Pleader, has put in appearance and waives service of notice.

10. Let affidavits-in-reply be filed by the respondents within four weeks, to which response, if any, may be filed by the learned Amicus by the next date of listing.

9. The consortium viz. Sumeet SSG BVG Maharashtra EMS Pvt. Ltd. has filed writ petition No.13113 of 2024 seeking a direction to respondent Nos.1 to 4 to forthwith execute the concessionaire agreement with the consortium in terms of Letter of Allotment dated 15th March 2024. In the aforesaid factual background, these petitions arise for our consideration.

(C) SUBMISSIONS ON BEHALF OF THE AMICUS IN PIL NO.62 OF 2024:

10. Learned Amicus has submitted that Sumeet Facilities was appointed as an Advisor to the State of Maharashtra and therefore, Sumeet Facilities could not have participated in the bid submitted in pursuance of the impugned tender. It is further submitted that since forensic audit was pending against BVG, which is a part of successful consortium, therefore, the tender ought not to have been awarded to the consortium. It is also

urged that there was increase of 87% in the number of ambulances (1756) as opposed to the rise in population (14% to 15%). It is, therefore, submitted that respondent Nos.1 to 4 be directed to issue a fresh tender for the purposes of award of MEMS Project, by following necessary law and guidelines and the impugned Government Resolution dated 15th March 2024 be struck down.

(D) SUBMISSIONS ON BEHALF OF THE PETITIONER IN WRIT PETITION NO.13113 OF 2024:

11. Learned senior counsel for the petitioner in writ petition No.13113 of 2024 submitted that the petitioner is a successful tenderer with the consortium and on account of pendency of the PIL, the State Government is not taking action to execute the concessionaire agreement with the consortium. It is, therefore, contended that the State Government be directed to execute the concessionaire agreement with the consortium in terms of the letter of acceptance dated 15th March 2024.

(E) SUBMISSIONS ON BEHALF OF STATE:

12. On the other hand, learned Advocate General has contended that the entire process of tender was started in April 2023 and finally concluded in March 2024. It is pointed out that nearly 64 prospective bidders participated in the pre-bid meeting of the first tender process however, none of the private parties, except one approached the Court, viz. the petitioner in writ petition (L) No.786 of 2024 (Jai Ambey Emergency Services (I) Pvt. Ltd. Vs. The Commissioner, Health Services and Mission Director, NHM, Mumbai Arogya Bhavan & Anr.) which was

dismissed by an order dated 28th June 2024. It is further submitted that a High Level Tender Committee comprising of highest officers of various departments was formed to monitor the tender process which led to finalization of the terms of the tender and approval of the tender till selection of the bidder. It is further submitted that the MoU signed with respondent No.5 was a general MoU and was not acted upon. It is contended that respondent No.5 was not involved in the finalization of the terms and conditions of the tender and the same were decided by a High Level Tender Committee. It is urged that the MoU executed with respondent No.5, which even otherwise was not acted upon, cannot vitiate the tender process in any manner. It is also urged that forensic audit is pending in respect of respondent No.6 and the Government of Maharashtra shall take suitable action against respondent No.6 depending upon the outcome of the forensic audit. It is submitted that merely on the basis of pendency of a forensic audit, respondent No.1 could not have been prohibited from participating in the tender. It is further submitted that the value of the tender has been decided on the basis of recommendations of the Expert Committee and does not suffer from any arbitrariness.

13. It is contended that the entire process leading to award of contract to the consortium has been conducted in a fair, transparent and reasonable manner which does not call for interference in exercise of powers of judicial review. In support of aforesaid submission, reliance has been placed on **JAGDISH MANDAL VS. STATE OF ORISSA AND OTHERS¹, MICHIGAN**

¹ (2007) 14 SCC 517

RUBBER (INDIA) LIMITED VS. STATE OF KARNATAKA AND OTHERS², N.G.PROJECTS LIMITED VS. VINOD KUMAR JAIN AND OTHERS³, AFCONS INFRASTRUCTURE LIMITED VS. NAGPUR METRO RAIL CORPORATION LIMITED AND ANOTHER⁴, TATA MOTORS LIMITED VS. BRIHAN MUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING (BEST) AND OTHERS⁵, and ASSOCIATION OF REGISTRATION PLATES VS. UNION OF INDIA AND OTHERS⁶.

14. Lastly, it is contended that subject to outcome of the PIL, the State Government shall take a suitable decision to enter into a concessionaire agreement with the consortium.

(F) REJOINDER SUBMISSIONS OF *AMICUS*:

15. By way of rejoinder, learned *Amicus* has submitted that the report produced by the petitioner must be examined. It is further submitted that dramatic increase in the price has not been satisfactorily explained by the respondents.

(G) CONSIDERATION:

16. We have considered the rival submissions made by both the sides and perused the record. The scope of judicial review of an administrative action in evaluating the tenders and awarding contracts is well delineated by catena of decisions of Supreme Court. In ***SIEMENS AKTIENGESELEISCHAFT AND SIEMENS LIMITED VS. DELHI METRO RAIL CORPORATION LIMITED***

² (2012) 8 SCC 216

³ (2022) 6 SCC 127

⁴ (2016) 16 SCC 818

⁵ 2023 SCC OnLine SC 671

⁶ (2005) 1 SCC 679

AND ORS.⁷, it was held that the tenders floated by the Government are amenable to judicial review only in order to prevent arbitrariness and favoritism and protect the financial interest of the State and public interest. Thus, the scope of judicial review is confined as to whether there was any illegality, irrationality or procedural impropriety Committed by the decision making authority. It has further been held that the Court cannot sit in appeal over the soundness of the decision made by the competent authority and the Court can only examine whether the decision making process is fair, reasonable, transparent and bona fide with no perceptible injury to public interest. In **CENTRE FOR PUBLIC INTEREST LITIGATION VS. UNION OF INDIA**⁸, the Supreme Court held that minimal interference is called for by Courts in exercise of judicial review of a decision taken by the technical experts after due deliberations inasmuch as the Courts are not well equipped to fathom into such domain which is left to the discretion of the executive. It has further been held that primary and secondary purpose of review is to ensure that administrative bodies act in efficient, transparent, fair, unbiased manner and keep in forefront public interest. Similar view has been taken in **TANGEDCO VS. CSEPD I – TRISHE CONSORTIUM**⁹ and **SAM BUILT WELL (P) LTD. VS. DEEPAK BUILDERS**.¹⁰

17. In the backdrop of well settled scope of judicial review in relation to award of contract, we may advert to the facts of the case in hand. The entire process of tender commenced in April

⁷ (2014) 11 SCC 288

⁸ (2016) 6 SCC 408

⁹ (2017) 4 SCC 318

¹⁰ (2018) 2 SCC 176

2023 and concluded in March 2024. The process of tender was initiated on the basis of the proposal dated 3rd April 2023 sent by the Commissioner, Health Services and Mission Director, National Health Mission, Mumbai and the Secretary, Public Health Department, State of Maharashtra. The expert committees were constituted to give inputs with regard to the vehicles specifications, bio-medical equipments specifications and information technology specifications of the hardware/software. The State Government, vide Government Resolution dated 21st June 2023 constituted a Committee of 13 members. The tender committee considered the suggestions of the three expert committees and thereafter finalized the terms and conditions of the tender and the tender was issued on 12th September 2023. As per the schedule, on 18th September 2023 a pre-bid meeting was held, in which 64 prospective bidders participated and raised 697 queries/suggestions. The tender committee, after considering several queries/suggestions, issued as many as 10 corrigendums to the tender between 4th October 2023 to 21st December 2023. The corrections with regard to EMD amount was not getting uploaded on the web portal. The validity of the tender was till 28th December 2023. The tender disappeared from web portal on 28th December 2023. The tender committee, therefore, decided to re-publish the tender incorporating the corrigendums. Accordingly, on 4th January 2024 the subject tender was issued.

18. The tender committee did not receive any bids upto last date of submission of the bid. The same was, therefore, extended to 23rd January 2024 and thereafter upto 24th January

2024. On 24.01.2024 the bid of the consortium comprising of Sumeet Facilities Ltd., BVG India Ltd. and SSG Transporte Sanitario was submitted. The tender committee evaluated the technical and financial bid. The tender committee, after two rounds of negotiations decided to take an administrative approval of the revised price. The competent authority, on 15th March 2024, issued an administrative approval. Thereupon, the contract was awarded on 15th March 2024 to the consortium. Thus, from the above narration of facts, it is evident that the entire tender process was extended over a period of nearly one year and was considered at various level by the expert committees and the tender committee. The prospective bidders participated in the pre-bid meeting and based on the inputs, necessary changes were made in the bid terms. It is also pertinent to note that no challenge to the tender process has been made by any private party. The entire process adopted is fair, transparent and reasonable. By no stretch of imagination, the tender process can be termed as arbitrary, irrational or *mala fide*.

19. In so far as involvement of Sumeet Facilities Ltd. in the tender process is concerned, it is pertinent to note that the MoU dated 16th January 2023 was executed between the State of Maharashtra and Sumeet Facilities Ltd. and one OST Inc (USA) on 16th January 2023 for techno feasibility study on integrated emergency services communication service NG 911/DIAL 112 project. The scope of aforesaid tender, which was not even otherwise acted upon, is entirely different from the subject tender. The State Government, in paragraphs 42 and 43 of the

affidavit in reply, has taken a specific stand that the tender was drafted by the tender committee after taking suggestions of three expert committees. The State Government as well as Sumeet Facilities Ltd. have expressly denied the involvement of Sumeet Facilities Ltd. in the subject tender. There is no material on record to indicate the involvement of Sumeet Facilities Ltd. in subject tender except the purported forensic audit. The aforesaid report, *ex facie* appears to be unbelievable as the stamp paper was issued and sold to the affiant by the stamp paper vendor at Gannavaram, District Krishna, Hyderabad, in State of Telangana by a notary of Gannavaram. The affidavit contains screenshots of tender documents which were taken on 29th December 2023. However, the same was live/available only till 28th December 2023. Therefore, irresistible conclusion can be drawn that Sumeet Facilities Ltd. did not participate in any manner in preparation and design of the subject tender.

20. As far as submission that forensic audit is pending against BVG India Ltd. and therefore, the consortium of which BVG is a member, ought not to have been awarded the contract is concerned, suffice it to say that the forensic audit is in respect of the previous tender. The State Government has yet to conclude the forensic audit. Merely on the basis of pendency of forensic audit, BVG India Ltd. cannot be prevented from participating in the tender. The decision to award the contract to the consortium of which BVG India Ltd. is a member, does not suffer from any infirmity. Needless to state that the State Government, subject to outcome of the forensic audit, shall be at liberty to take appropriate action, if so advised against BVG India Ltd.

21. Now we advert to the issue with regard to the increase of 87% in the number of ambulances (1756) as opposed to the rise in population (14% to 15%). The State Government is required to follow the guidelines laid down by National Health Mission Conditionalities Framework 2022-24 and to increase the number of ambulances as per the population norms. The State Government has taken into account the norms and has assessed that there is requirement of 1529 ambulances. The chart showing the break-up of the ambulances is extracted below for the facility of reference:

Sr. No.	Division	Population	ALS	BLS	Total
1	Mumbai	32,657,606	66	330	396
2	Pune	26,319,041	53	265	318
3	Amravati	12,636,029	25	125	150
4	Nagpur	13,193,091	26	133	159
5	Aurangabad	21,024,518	43	212	255
6	Nashik	20,853,405	42	209	251
	Total	126,683,690	255	1,274	1,529

(H) CONCLUSION:

22. It is not for the petitioner to determine the number of ambulances which should be open for the State to advance the public health. The subject tender is to provide emergency medical services with a fleet of 937 ambulances across the State of Maharashtra, which is in public interest. The project, in public interest, must progress without interruption and intervention of the Court in such cases should be minimal. On this count also,

no interference is called for in this PIL petition. Needless to state that it will be open for the State Government to take an appropriate decision about the execution of the concessionaire agreement with the consortium within a period of four weeks from today.

23. Before parting, we place on record our appreciation for the able assistance offered by learned *Amicus* Mr.Vyankatesh Dhond.

24. In the result, the PIL is dismissed, whereas, the writ petition is disposed of.

25. Interim application(s), if any, stands disposed of.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)