

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2043 OF 2025**

Kanchan Drugs Private Limited

...Petitioner

Vs.

Pimpri Chinchwad Municipal Corporation & Ors.

...Respondents

Mr. Sarang Bhirange for the Petitioner.

**CORAM : ALOK ARADHE, CJ. &
ARIF S. DOCTOR, J.**

DATE : 17TH FEBRUARY, 2025

P.C.:-

1. The Petitioner has, by the captioned Writ Petition (i) challenged clause 4(V)(1) of the tender condition in the tender floated by Respondent No. 1 for procurement of surgical items and (ii) impugned the Petitioners disqualification by Respondent No. 1.

2. Before however advertng to the Petitioner's contentions, it is essential to set out the following facts, viz.

- i. Respondent No. 1 had issued an E-Tender Notice No. 06/2024-2026 for the purpose of procurement of surgical

items. clause 4(V)(1) of the tender conditions required prospective bidders to produce work orders issued to them by Governmental or Semi-Governmental Organisations in the last five years which were 50% of quoted value in the tender.

- ii. The Petitioner thereafter participated in the tender and submitted its bid on the E-procurement system of the Government of Maharashtra.
- iii. Respondent No. 1 however, vide a letter dated 7th January, 2024 rejected the Petitioner's bid and disqualified the Petitioner on the ground that Petitioner had failed to submit work orders from Government or Semi Government Organisations in terms of the said tender condition.
- iv. It is thus that the Petitioner on 4th February, 2025 filed the captioned Writ Petition seeking the following reliefs :

“a) This Hon'ble Court may please to issue Writ of Mandamus or any other writ, order or direction in the nature of Mandamus thereby declaring the pre-qualification condition mentioned in paragraph 4(V)(1) of the E-tender notice no.06/2024-2026 issued by Respondents in respect of supply of surgical

equipments/ consumables, is unconstitutional, discriminatory, against the public policy, and against the right of equality.

b) This Hon'ble Court may please to hold and declare that the order dated 07/01/2024 (07/01/2025) of disqualifying the Petitioner at the stage of pre-qualification is unconstitutional, discriminatory, against the public policy, and against the right of equality on the ground mentioned in the said impugned order.

c) The Respondents be directed forthwith to withdraw and/or cancel the order of disqualification dated 07/01/2024 (07/01/2025) of the Petitioner and the Petitioner be allowed to participate in the tender further.

d) This Hon'ble Court may please to restrain the Respondent from conducting the said bid including the financial bid till the date of decision of this petition.”.

3. Mr. Bhirange, Learned Counsel appearing on behalf of the Petitioner has invited our attention to clause 4(V)(1) of the said tender and submits that the same is unconstitutional, discriminatory, illegal, irregular, arbitrary and against the right to equality. He then pointed out that the Petitioner had infact submitted work orders in terms of clause 4(V)(1) however, they were from the year 2021-2022 instead of the year 2019-2020. He thus submitted that the Petitioner, despite being sufficiently qualified, was kept out of the tender process

only because the Petitioner submitted the work orders of the last 3 years instead of 5 years. He submitted that the requirements under clause 4(V)(1), barred new companies from participating in the tender process and was therefore not only unreasonable but also against the spirit of competition.

4. When it was put to the Learned Counsel for the Petitioner as to how the Petitioner could after having unreservedly participated in the tender processes challenged the said tender condition, there was no real answer forthcoming.

5. Thus, given the well settled legal position that after disqualification it was not open to a party to challenge the tender conditions, we are not inclined to interfere. This Court in the case of *Inducare Pharma Private Limited Chief Executive Officer, Zilla Parishad Ratnagiri*¹ and *Sai Agencies Jalna Vs. State of Maharashtra*² had in similar facts held that a bidder who had participated in the tender cannot turn around and challenge the terms and conditions of the tender.

¹ 2021 SCC OnLine Bom 13960

² Order dated 1st November 2023 of Division bench of this Court in Writ Petition 11762 of 2023

6. Thus for the aforesaid reasons, the Writ Petition is dismissed.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)