

Pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5197 OF 2025**

Opal Construction

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr. A. A. Kumbhakoni, Senior Advocate with Mr. T. D. Deshmukh with Ms. Kajol Punjabi i/by Ronak Utgikar a/w Meghana Chavan for petitioner.

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

Mr. Nitin Gaware Patil a/w Mr. Divyesh K. Jain for respondent nos.2 to 4.

Mr. Darius Khambata, Senior Advocate a/w Mr. Sidheshwar N. Biradar, Mr. Tushar Hathiramani, Mr. Dinesh R. Shinde and Mr. Saurabh Kudekar for respondent no.5.

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

DATE: 4th AUGUST, 2025

ORAL ORDER [Per Chief Justice] :

1. Heard on the question of admission.
2. In this writ petition, the petitioner, *inter alia*, seeks a direction to the respondent nos.1 to 4 to recall on-going tender process initiated pursuant to E-Tender Notice No.9/2023-2024 dated 13th March, 2024 and re-invite bids by issuing a fresh tender. The petitioner also seeks a direction to the respondent nos.1 to 4 to stay the process of tender and to direct them not to issue work order.

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
Date:
2025.08.05
15:05:22
+0530

3. Facts giving rise to filing of the instant writ petition, briefly stated, are that on 13th March, 2024 a tender was floated by Executive Engineer, Nira Deoghar Project Division Sangvi (Bhatghar), Taluka Bhore, Pune for construction of pipe line distribution network for Nira Deoghar Right Bank Canal. The tender conditions stipulated that a tenderer was required to complete the process of Geo Tagging between the period from 29th March, 2024 to 2nd April, 2024. The petitioner was unable to complete the process of Geo Tagging in the aforesaid period. The petitioner, thereupon, submitted a representation on 30th April, 2024 seeking extension by one week to enable it to complete the process of Geo Tagging.

4. Thereafter, the Water Resources Department of Government of Maharashtra on 14th June, 2024 issued a corrigendum and deleted the requirement of Geo Tagging under the tenders issued by Water Resources Department. The corrigendum clearly provided that it shall apply to the tenders which are yet to be issued. In other words, the corrigendum was made prospective. In the meantime, the Superintending Engineer of Maharashtra Krishna Khore Development Corporation requested the Additional Chief Secretary for cancellation of tender process on account of

availability of insufficient funds. However, it appears that the tender process was taken further and technical bids were opened, which indicated that out of seven bidders, bids of three bidders were found technically qualified. The Assistant Engineer, Irrigation Department, Pune granted approval for technical bids scrutiny vide letter dated 12th February, 2025. Thereafter the tender summary report was published on 15th February, 2025. The financial bids were also opened on 17th February, 2025, in which respondent no.5 was found to be L1 and the work order dated 27th May, 2025 was issued in favour of respondent no.5.

5. In the aforesaid factual background, the petitioner has approached this Court.

6. Learned senior counsel for the petitioner submitted that in the light of the corrigendum issued by the State Government dated 14th June, 2024, the tender should be recalled. It is further submitted that the condition of Geo Tagging could not have been made mandatory condition. It is further submitted that the action of the tendering authority in prescribing only five days for completing Geo Tagging, though the tender was pending for a period of eleven months, is arbitrary and unreasonable. It is further submitted that the

petitioner had made an application seeking extension of time to enable it to complete Geo Tagging. However, the time for compliance with the condition of Geo Tagging is not extended. It is also submitted that out of the seven bidders, three bidders have qualified. That there is fractional difference between the three bidders who are found to be technically qualified. It is, therefore, contended that the impugned tender be quashed and set aside and the tendering authority be directed to issue fresh tender.

7. On the other hand, learned senior counsel for the respondent no.5 has submitted that the requirement of Geo Tagging, which was stipulated in the tender was in consonance with Clause 14 of the Government Resolution dated 18th October, 2023 issued by the Government of Maharashtra. It is further submitted that the aforesaid corrigendum is prospective in nature and does not apply to the tender in question. It is also pointed out that the petitioner has not submitted its bid for the tender in question as the petitioner did not fulfill the requirement of minimum turn over and the requirement of joint venture under the agreement. It is also submitted that the petitioner, in addition, has not fulfilled the criteria of Geo Tagging and,

therefore, the petitioner is not qualified to bid in the tender. Therefore, at the instance of the petitioner, the validity of the tender condition cannot be examined.

8. Learned senior counsel for the petitioner, in response, submits that if the petitioner was required to complete the requirement of Geo Tagging, the petitioner would have met the other requirements as well.

9. We have considered the submissions made on both sides and perused the record.

10. It is well settled legal proposition that the author of the document is the best person to understand and appreciate the requirements contained in the tender document [See: **Caretel Infotech Ltd. Vs. Hindustan Petroleum Corporation Ltd. & Ors., (2019) 14 SCC 81**]. It is equally well settled in law that the Court cannot sit over any judgment on what should be the eligibility criteria in tender notice [See: **Ulfex Limited vs. Government of Tamil Nadu & Ors., (2022) 1 SCC 165**].

11. In the instant case, the tender in question was issued on 13th March, 2024. Clauses 1.15 to 1.15.5, which are relevant for the purpose of deciding the controversy are extracted below for the facility of reference:

"1.5 GEO-TAGGING- The following standard procedure (SOP) should be followed for field inspection and Geo-Tagging.

1.15.1. The bidder or their representative should require to visit the site to inspect the Canal site, Pipe distribution network area and other important works like Road crossing, Nala crossing, before submitting the tender.

1.15.2. Following work places are fixed for geo-tagging.

Sr. No.	Latitude	Longitude	Detail of location
1	17 ° 59' 20"N	74° 18' 20" E	At. Mulikwadi, Tal. Phaltan, Dist. Satara
2	17 ° 56' 15"N	74° 23' 54"E	At. Kurwali (kh.), Tal. Phaltan, Dist. Satara
3	17 ° 56' 59"N	74° 30' 49" E	At. Wadale, Tal. Phaltan, Dist. Satara

1.1.1. The Geo-Tagging should be carried out by the bidder during period from **Dt. 29/03/2024 to Dt. 02/04/2024.**

1.15.4 Geo-Tagging should be done by the bidder himself or by his authorised representative. It shall be mandatory for the bidder or their authorised representative to mention the date and time of the visit along with self-attestation on certificate of Geo-Tagging along with Geo-Tagging photographs at each site location mentioned in 1.15.2 and submits with Envelop No.1

1.15.5 It is mandatory for the bidder to submit the above Geo-Tagged phot with Geo Tagging certificate in Envelope No.1 of tender document otherwise his Envelope No.2 will not be opened & his tender will not be considered."

The aforesaid conditions contained requirement of Geo Tagging. The petitioner apparently did not have any grievance about the tender condition requiring Geo Tagging by

the bidders. It did not write to the tendering authority complaining about the condition of Geo Tagging. It also did not express any difficulty about conduct of Geo Tagging within the prescribed period from 29th March, 2024 to 2nd April, 2024. Long after expiry of the prescribed period for Geo Tagging, petitioner thought of addressing communication dated 30th April, 2024. In this communication also, the petitioner did not raise any grievance about Geo Tagging tender condition. The petitioner requested for extension of time limit for conduct of Geo Tagging by referring to the corrigendum dated 19th June, 2024. The said corrigendum dated 19th June, 2024 had absolutely no relevance to the tender condition of Geo Tagging. It appears that one proposed bidder – M/s. Patel Infrastructure Limited, Gujarat had requested for extension of time limit for submission of bids vide letter dated 4th April, 2024. Acting on the said representation, the tendering authority issued corrigendum dated 19th April 2024 only extending the last date for submission of bids till 6th May, 2024. The petitioner, who had never shown any interest in either participating in the tender process or making any attempt to conduct Geo Tagging during window period from 29th March, 2024 to 2nd April, 2024, sought to use issuance of

corrigendum dated 19th April, 2024 for the purpose of seeking extension of time for conduct of Geo Tagging. In the said letter, petitioner did not disclose as to why it did not conduct Geo Tagging between 29th April, 2024 to 2nd April, 2024. The pretext of deployment of bouncers raised during the course of oral submissions is conspicuously absent in the communication dated 30th April, 2024.

12. No action was taken on petitioner's letter dated 30th April, 2024 and the tendering authority did not extend the time for conduct of Geo Tagging. Petitioner allowed the last date for submission of bid to expire but did not submit its bid.

13. The petitioner now seeks to take benefit of the corrigendum dated 14th June, 2024, which reads thus:

"GOVERNMENT CORRIGENDUM: -

Procedure for tender to be adopted by Water Resources Department, was issued vide Government Resolution dated 18.10.2023. The point No.4 in regard to geo tagging to be done by the bidder has been cancelled. Therefore, all other consequential provisions made thereunder are hereby called.

This change has been made applicable to the bids/tenders which have been issued from the date of issuance of this Corrigendum.

The implementation of this corrigendum will be made applicable from the date of it's issuance.

This Government Corrigendum will be made available on the website of Government of Maharashtra www.maharashtra.gov.in and it's code no.

202461415522255227. This corrigendum has been issued by attested digital signature.

Issue and per orders and in the name of Governor of Maharashtra."

From the perusal of the aforesaid corrigendum, it is evident that it is prospective in nature and does not apply to the tender in question. Apart from the fact that the corrigendum is prospective in nature, issuance thereof does not create any cause of action in petitioner's favour to file the present petition as it never complained about imposition of Geo Tagging condition in the tender document. The petitioner, in the instant petition, has neither chosen to challenge the authority of the respondent nos.1 to 4 in prescribing the impugned condition nor has challenged the impugned condition. It is pertinent to note that the tender was issued on 13th March, 2024. The condition of Geo Tagging was required to be complied by the petitioner between 29th March, 2024 to 2nd April, 2024. The petitioner submitted representation on 30th April, 2024 seeking a week's time to enable it to comply with the condition of Geo Tagging. Thereafter, the petitioner did not approach this Court. The petitioner waited till 15th April, 2025, on which date the writ petition was filed. The conduct of the petitioner is one of a fence sitter. The pretext

cited for non filing of the petition in a timely manner of proposal for cancellation of tender process is completely misplaced. The tender process was not sought to be cancelled on account of issuance of corrigendum dated 14th June, 2024. It appears that there was some administrative difficulty in allocating budget for execution of the work which is a reason why proposal was submitted on 2nd July, 2024 for cancellation of tender process. However, it appears that the tendering authority has gone ahead with the tender process by technically evaluating seven bids received and thereafter subjecting the three eligible bidders for financial evaluation.

14. The petitioner has neither participated in the tender process nor has demonstrated before us as to how it fulfills the other eligibility criteria of turnover as well as joint venture arrangement.

15. For the aforementioned reasons, we do not find any merit in the writ petition. The same fails and is hereby dismissed.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)