

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

**WRIT PETITION NO.6399 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO.20061 OF 2025**

The Maharashtra State Co-operative
Marketing Federation Limited

...Petitioner

V/s.

The Commissioner of Chairman,
Tribal Development, Maharashtra State,
Nashik

...Respondent

Mr. Shrikrishna Ganbavale *for the Petitioner.*

Mr. B.V. Samant, *Addl. GP with Smt. R.M. Shinde, AGP for Respondent - State.*

CORAM: ALOK ARADHE, CJ. &

SANDEEP V. MARNE, J.

Dated: 20 JUNE 2025.

Oral Order *(Per Sandeep V. Marne, J.):*

1. Maharashtra State Co-operative Marketing Federation Limited is aggrieved by the decision of the tendering authority in not opening its financial bid on the ground of samples of food items submitted by it not meeting the prescribed quality parameters. It has accordingly filed the present Petition under Article 226 of the Constitution of India challenging

the communication dated 5th May 2025 intimating the decision of rejection of its bid. It has also prayed for consideration of its financial bid.

2. Petitioner is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 engaged in the activities *inter alia* of procuring agricultural produce from farmers. It is claimed that more than 93% of its paid-up equity capital is owned by Government of Maharashtra. A Tender Notice was published on 4 February 2025 by the Commissioner and Chairman, Tribal Development, Maharashtra State, Nashik, for supply of foodgrains, pulses, condiments, spices and edible oil during the year 2025-26 and 2026-27 to Government Ashram schools for provision of food grain to the students. The Petitioner submitted its bid in pursuance of the Tender Notice. It is the case of Petitioner that after evaluation of the technical bids, its bid was declared qualified. Petitioner submitted samples of each item covered by the tender for testing. It was directed to pay an amount of Rs.66,080/- for laboratory testing of the samples. Petitioner paid the requisite laboratory testing charges. On 5 May 2025, the Petitioner received an email that its bid was not admitted by the Committee and the Petitioner was advised to get in touch with tender inviting authority. On 5 May 2025, the tender summary report was published in which the reason for rejection of Petitioner's bid was declared as 'sample disqualified'. Aggrieved by rejection of its bid, the Petitioner has filed the present Petition.

3. By interim order dated 27 May 2025, this Court directed that final decision, if any, taken for issuing work order shall not be implemented. The Respondent has filed affidavit-in-reply and the Petitioner has filed

rejoinder. Since none had appeared on behalf of the Petitioner on 11 June 2025 while adjourning the Petition to 20 June 2025, interim arrangement made earlier on 27 May 2025 was not continued. Petitioner has accordingly filed Interim Application (stamp) No.20061 of 2025 seeking continuation of interim order.

4. Pleadings in the Petition are complete. Hence, **Rule**, which is returnable forthwith. Petition is taken up for final disposal with the consent of the learned counsel appearing for parties.

5. Mr. Ganbavle, the learned counsel appearing for the Petitioner would submit that rejection of Petitioner's bid is clearly arbitrary. That Petitioner has been declared technically qualified vide notice dated 4 April 2025. That once Petitioner's bid is declared technically qualified, its financial bid ought to have been opened. He would submit that under the tender conditions, the bid, which is declared technically qualified, could not have been rejected without opening the financial bid. Reliance is placed on clause 7.1.6, which, according to Mr. Ganbavle, contemplated opening of financial bid of every bidder, whose technical bids were qualified. He would further submit that Petitioner had submitted 28 samples for testing out of which only four samples are allegedly disqualified whereas the balance 24 samples are found to be qualified. He would further submit that under clause 5.4 of the tender document, a note of disqualification of sample was required to be provided to the concerned bidder. That Petitioner was never informed about rejection of its samples or details of such rejection. That initially, it was informed vide email dated 5 May 2025 about non admission of its bid without assigning any reason and later tender summary report

was published by citing vague reason of sample disqualification. That the tendering authority cannot be permitted to supplement the reason by filing affidavit-in-reply. That only after filing of the reply, Petitioner got to know about details of rejection of 4 out of 28 samples. Lastly, he would submit that Petitioner is an undertaking of Government of Maharashtra and not a commercial entity and that therefore it must be given an opportunity to participate in further tender process, which would only ensure better competition. He would accordingly pray for setting aside the impugned decision of the tendering authority.

6. Mr. Samant, the learned Addl. GP would appear for Respondent-State and oppose the Petition. He would submit that the tender conditions required the bidders to clear the stage of passing of samples of items even after their technical qualification. He would submit that samples submitted by the Petitioner were sent to laboratory, which disqualified 4 out of 28 samples submitted by the Petitioner. He would take us through the laboratory test reports to demonstrate as to how the samples submitted by the Petitioner could not meet the prescribed criteria in the tender competition. Lastly, Mr. Samant would submit that interim order granted by this Court has resulted in non-processing of the tender for further stages thereby affecting food supply to the children of Ashram Schools. He would accordingly pray for dismissal of the Petition.

7. We have considered the rival submissions canvassed by the learned counsel appearing for the parties. We have also gone through the documents placed by parties along with their respective pleadings.

8. Petitioner's bid has been rejected for the reason of failure to meet the prescribed quality parameters in respect of food item samples submitted by it. The tender process apparently involved three stages viz., initial technical evaluation, sample testing through laboratory and thereafter the last stage of opening of financial bid was to be undertaken. The relevant clauses of tender notice are as under:-

5.4 Financial Bid

The financial bids of Bidders, who do not pass through technical bid qualification and validity requirements including laboratory testing of samples, shall not be opened and a note to that effect will be made. The Bidder should quote his offer duly signed in terms of lumpsum rate per unit of measurement of material including all the taxes and expenses viz. Loading, unloading, weighing, transport, etc.

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7.1.4 The Commissioner, Tribal Development, Maharashtra State, Nashik shall announce the outcome of the scrutiny of the technical bid and the list of the qualified bidder also will be announced.

7.1.5 The qualified bidder shall be then communicated to submit 2 samples of 1 KG of each item to the office of Commissioner, Tribal Development, Maharashtra State, Nashik within 24 hours of the communication.

7.1.6 The financial bids of Bidders, who do not pass through technical bid validity requirements, shall not be opened and a note to that effect will be made.

9. It appears that out of the 6 bidders, 5 were found technically qualified including that of the Petitioner and result of the technical scrutiny was published vide notice dated 4 April 2025. As per tender condition,

Petitioner had submitted samples of 28 items of 1 KG in set of 2 packets. After Petitioner was found technically qualified on 4 April 2025, letter dated 8 April 2025 was issued calling upon the Petitioner to deposit amount of Rs.66,080/- towards lab testing charges. Petitioner paid the said amount on 9 April 2025. The samples submitted by the Petitioner and by other bidders were accordingly sent to the laboratory by the tendering authority. Out of the samples of 28 items submitted by the Petitioner, four samples were found to be disqualified whereas the remaining 24 samples were declared qualified by the laboratory. We have gone through the test reports of laboratory in respect of the items viz. *Matki, Masoor Dal, Udid dal* and *Garam Masala* for which Petitioner's samples are found to be disqualified. Tender document had declared qualification specifications of each food item. The laboratory conducted test on the parameters declared on the samples submitted by the Petitioner and reported that samples viz. *Matki, Masoor Dal, Udid dal* and *Garam Masala* did not meet the specifications prescribed in the tender document. Accordingly, Petitioner's bid has been rejected. In our view, the tendering authority has acted fairly in the matter of processing Petitioner's bid. Its bid has been rejected on account of samples of all 28 items not being of the requisite quality and prescribed criteria. Rejection of the Petitioner's bid is thus valid and we are unable to trace any element of arbitrariness, irrationality or perversity in the impugned decision of the tendering authority.

10. In tender matters, scope of interference by this Court lies in extremely narrow compass. It is well settled that in tender matters, the court does not sit as a court of appeal but merely reviews the manner in

which the decision was made. reference in this regard can be made to the Hon'ble Apex Court judgment in ***Tata Cellular v. Union of India***¹.

11. The tendering authority has strictly adhered to the procedure and tender conditions made known to all the bidders. Petitioner participated in the tender process with full knowledge that the financial bid was not required to be opened unless the samples of the 28 items submitted by it were cleared in the laboratory tests. Since samples of all 28 items could not qualify the prescribed quality parameters, Petitioner's bid has rightly been rejected.

12. The submission made on behalf of the Petitioner that it is an organ of State Government and not a commercial entity does not cut any ice in view of the fact that some of the other qualified bidders are also Government associated entities.

13. We therefore, do not find any valid reason to interfere in the impugned decision of the tendering authority. Petition is devoid of merits. It is accordingly dismissed. Rule is discharge.

14. In view of dismissal of the Petition, nothing survives in the interim application and the same stands disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

¹ (1994) 6 SCC 651