

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

WRIT PETITION NO.6703 OF 2025

National Security Services
(through its Manager)
Deepak Mahavir Limbikai
Aged 37 years, occ. Service
having its office at Datta Niwas
Mitra Society, Deep Bungalow
Chowk, Pune – 16.

....Petitioner

Versus

- 1 The State of Maharashtra
(through its Principal Secretary
Urban Development Department
Mantralaya, Mumbai)
- 2 The Commissioner / Administrator,
Pimpri Chinchwad Municipal Corporation
Pimpri – 411018.
- 3 B.V.G. India Limited
(through its
B.V.G. House Premier Plaza
Pune-Mumbai Road,
Pune – 411 019.
- 4 Krystal Integrated Services Ltd.
Flat No.15/17, Crystal House,
Duccan Gasweay Road, Sion East
Mumbai – 400 022.
- 5 Smart Services Pvt. Ltd.
403, Western Court, 4th Floor,
Ganesh Khind Road,
Opp. E Square Theatre
Shivaji Nagar, Pune 411 016.

6 Sainik Intelligence and
Security Pvt. Ltd.
Having its office at Shop No.33
Ground floor, Suraj Plaza,
Station Road Bhayander West
Thane 401101

....Respondents

Mr. Simil Purohit, Senior Advocate *i/b Mr. Anandsingh Bayas, for the
Petitioner.*

Mr. A.I. Patel, Additional GP *with Ms. D.S. Deshmukh, AGP for
Respondent No.1-State.*

Mr. Kedar Dighe, *for Respondent No.2-PCMC.*

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

**Judgment Reserved on: 16 JUNE 2025.
Judgment pronounced on: 19 JUNE 2025**

JUDGMENT : *(Per : Sandeep V. Marne, J.)*

1. Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India challenging decisions dated 17 February 2025 and 22 April 2025 rejecting its bid as being technically ineligible. Petitioner also seeks direction for disqualification of Respondent Nos.3 to 6 and for consideration of its bid in the impugned Tender process.

2. Briefly stated facts of the case are that:-

Pimpri Chinchwad Municipal Corporation published E-Tender Notice No.2/2024-2025 dated 23 September 2024 inviting bids for provision of 1194 helpers to the security guard on contract basis in respect of various municipal properties. The Tender Notice stipulated the prescribed eligibility criteria for the bidders. Petitioner claims to have been providing security manpower and other personnel to the Respondent-Municipal Corporation since the year 2016. It believes that it fulfills the prescribed eligibility criteria in the Tender Notice. Accordingly, Petitioner submitted its bid in pursuance of the Tender Notice. Total 6 bids were received by the Respondent-Municipal Corporation including that of Petitioner and Respondent Nos.3 to 6. The technical bids were opened on 5 November 2024. It is the contention of the Petitioner that after opening of the technical bids, Respondent Nos.3 to 6 were illegally given opportunity to submit the shortfall of documents. The Petitioner was never called upon to submit any shortfall document, which Petitioner believes was an indication of it having fulfilled the prescribed eligibility criteria. According to Petitioner, opening of the technical bid was held and announced on 17 February 2025. Petitioner was adjudged disqualified on the ground of lack of experience. Petitioner protested vide letter dated 17 February 2025. It filed Writ Petition No.2529 of 2025 in this Court challenging the rejection of its bid and questioning the action of Respondent - Municipal Corporation treating Respondent Nos.3 to 6 to be eligible. Petition came to be disposed of by this Court by order

dated 25 March 2025 directing the Municipal Corporation to decide the representation made by the Petitioner. After disposal of the Petition, the Petitioner addressed further representation dated 26 March 2025. By impugned order dated 22 April 2025, the Respondent -Municipal Corporation has rejected the representation of the Petitioner. Aggrieved by the Communication dated 22 April 2025, Petitioner has filed the present Petition.

3. By interim order dated 29 May 2025, this Court recorded a statement made on behalf of the Respondent-Municipal Corporation that the final decision in the impugned tender process shall not be implemented.

4. Respondent-Municipal Corporation has filed the Affidavit-in-Reply opposing the Petition contending that the Petitioner does not fulfill the requisite eligibility criteria prescribed in Clause 3(m)(a), 3(m)(b) and 3(m)(c) of the tender document.

5. Petitioner has impleaded Respondent Nos.3 to 6 on account opportunity granted to them to submit shortfall document. Since we are proceeding to reject the said ground raised by the Petitioner, it is not necessary to issue notice to Respondent Nos.3 to 6. We therefore do not consider it necessary to issue notice to Respondent Nos.3 to 6 while deciding the Petition finally.

6. Mr. Purohit, the learned senior advocate appearing for the Petitioner would contend that the rejection of Petitioner's bid is clearly irrational and arbitrary. That Petitioner has been supplying helpers to security guards for the Respondent-Municipal Corporation and has the experience of having deployed as many as 1413 helpers as against the required number of 955 helpers under Clause 3(m)(c) of the tender document. He would take us through Clause 3(m) of the tender document, under which, according to Mr. Purohit, the bidders were required to fulfill the condition of having executed either (a) three works of similar nature with not less than 40% of the budget value of the work plus provision of 478 security helpers or (b) two works of 50% of value of contract plus 597 security helpers or (c) one work of 80% contract value plus 955 security workers. He would submit that Petitioner clearly fulfills the criteria prescribed in Clause 3(m)(c) of having executed one work of 80% contract value plus provision of 955 security helpers. He would rely upon condition in the tender document, under which it was permissible to submit certificates of different agencies for the purpose of consolidating the work experience stipulated therein. He would then rely upon certificate dated 5 September 2024 issued by the Respondent-Municipal Corporation in support of his contention that Petitioner fulfills condition prescribed in Clause 3(m)(c) of the Tender document. He would submit that Respondent-Municipal Corporation has acted contrary to the tender condition by holding in the impugned order dated 22 April 2025 that Petitioner failed to produce experience certificate and work order of singular work of having provided 955 security guard helpers. Mr. Purohit would

accordingly pray for setting aside impugned decisions of Respondent-Municipal Corporation rejecting the Petitioner's bid.

7. The Petition is opposed by Mr. Dighe, the learned counsel appearing for Respondent No.2-Municipal Corporation. He would submit that the main grievance of the Petitioner in the previous Petition as well as in the present Petition is about granting opportunity to Respondent Nos.3 to 6 to submit shortfall documents. He would submit that since Petitioner is held ineligible in the technical bid, he cannot question grant of opportunity to Respondent Nos.3 to 6 to submit the shortfall documents. He would invite our attention to the order dated 25 March 2025 passed by this Court recording that Petitioner does not fulfill eligibility criteria prescribed in Clauses 3(m)(a) and 3(m)(b). That though Petitioner secured order from this Court for consideration of representation by submitting additional documents for demonstrating fulfillment of eligibility criteria prescribed under Clause 3(m)(c), it did not produce even a single additional document. Mr. Dighe would further submit that in absence of production of any additional document, Petitioner failed to demonstrate fulfillment of eligibility criteria even under Clause 3(m)(c) of the Tender document. He would therefore submit that no interference is warranted in the decision of the Respondent-Municipal Corporation holding the Petitioner to be technically disqualified. He would pray for dismissal of the Petition.

8. Rival contentions of the parties now fall for our consideration.

9. Petitioner has essentially raised two grievances in the Petition. His first grievance is about grant of opportunity to Respondent Nos.3 to 6 to submit shortfall documents. The second grievance is about rejection of Petitioner's bid on the ground of failure to meet the eligibility criteria prescribed in the tender document.

10. So far as the first grievance of the Petitioner about grant of opportunity to Respondent Nos.3 to 6 to submit the shortfall document is concerned, in our view, no relief can be granted in favour of the Petitioner on that count. This is second round of litigation initiated by Petitioner. In the first round, in the form of Writ Petition No.2529 of 2025, Petitioner had raised the very same grievance of grant of opportunity to Respondent Nos.3 to 6 to submit shortfall document. In that Petition, the second contention about Petitioner fulfilling eligibility condition was also raised. This Court however, disposed of the Writ Petition No.2529 of 2025 for reconsideration of decision by the Respondent-Municipal Corporation about satisfaction of eligibility criteria prescribed in Clause 3(m)(c) of the Tender document by the Petitioner. In this regard it would be relevant to reproduce paragraphs 13 to 15 of the order dated 25 March 2025, which reads thus :-

13. We are satisfied that the petitioner does not fulfill clauses 3(m)(a) and 3(m)(b) on the basis of the materials on record and as such, there is no infirmity on the part of the respondents in disqualifying the petitioner in technical bid.
14. During the course of the arguments, learned counsel for the petitioner made an attempt to persuade us that the petitioner satisfies the criteria laid down in clause 3(m)(c). We invited the attention of learned counsel Shri Dighe appearing for PCMC to paragraph 21 of the affidavit-in-reply where it is stated that had the petitioner any case on merits, he would have annexed those documents to the present petition and would have asked for fresh consideration of the said additional documents. It is stated that the respondent-Corporation shall consider these documents on merits subject to orders of this Court.
15. In such a view of the matter and having regard to the fair stand taken by the PCMC, since the representation made by the petitioner is pending, we permit the petitioner to file an additional/fresh representation to the PCMC along with any additional documents in support of its case that the petitioner fulfills the eligibility conditions. The said representation along with supporting additional documents be duly considered and an informed decision be taken on such representation. If such representation is made, Shri Dighe submits that within a period of two days therefrom, a decision thereon will be taken on its own merits.

11. Thus, though the ground of grant of opportunity to Respondent Nos.3 to 6 to submit shortfall document was specifically raised in Writ Petition No.2529 of 2025, this Court did not disqualify Respondent Nos.3 to 6 while passing order dated 25 March 2025. The order of remand made by this Court was essentially restricted only for reconsideration of issue of Petitioner's eligibility under Clause 3(m)(c) of the Tender document. The order of remand did not permit the Petitioner to reagitate the objection of grant of opportunity to Respondent Nos.3 to 6 to submit the shortfall

documents. In our view the said objection is clearly barred by principle of constructive *res judicata*. Even otherwise, the Government Resolution dated 17 September 2019 mandates grant of opportunity to the bidders to submit shortfall documents. We are therefore not inclined to interfere in the opportunity granted by Respondent-Municipal Corporation to Respondent Nos.3 to 6 to submit the shortfall document. The first ground raised by the Petitioner is accordingly rejected.

12. Coming to the second ground of rejection of bid of the Petitioner for failing to meet prescribed eligibility criteria, it would be apposite to reproduce the eligibility criteria prescribed in Clause 3(m) of the Tender document :-

3(m)कंत्राटदाराचा मागील ०७ वर्षांच्या सुरक्षा व्यवस्थेच्या कामकाजाच्या अनुभवपैकी मागील कोणत्याही आर्थिक वर्षात महाराष्ट्रामध्ये शासकीय/निमशासकीय ठिकाणी सुरक्षा विभागामध्ये तुल्यबळ किंमतीचे सुरक्षा व्यवस्थेचे रखवालदारांचे "मदतनीस" काम अ, ब, क नुसार पूर्ण केले असले पाहिजे त्याची कमीत कमी किंमत देय कामाचे किमतीनुसार तत्कालीन प्रचलित दराने असणे आवश्यक आहे.

अ. वरील नमूद पद्धतीची तीन कामे ज्यांची काम निहाय किंमत बोलावण्यात आलेल्या निविदेच्या वार्षिक अंदाजित रकमेच्या ४०% पेक्षा कमी नसावी व किमान ४७८ रखवालदारांचे "मदतनीस" पुरविलेले बाबतचे तीन कामाचे कार्यादेश व अनुभव प्रमाणपत्र सादर करावे.

किंवा

ब. वरील नमूद दोन सारख्या पद्धतीची कामे ज्यांची काम निहाय किंमत बोलवण्यात आलेल्या निविदेच्या वार्षिक अंदाजित रकमेच्या ५०% पेक्षा कमी नसावी व किमान ५९७ रखवालदारांचे "मदतनीस" पुरविलेले बाबतचे दोन कामाचे कार्यादेश व अनुभव प्रमाणपत्र सादर करावे.

किंवा

क. वरील नमूद एक सारख्या पध्दतीची कामे ज्यांची काम निहाय किंमत बोलवण्यात आलेल्या निविदेच्या वार्षिक अंदाजित रकमेच्या ८०% कमी नसावी व किमान ९५५ रखवालदारांचे "मदतनीस" पुरविलेले बाबतचे एक कामाचे कार्यदेश व अनुभव प्रमाणपत्र सादर करावे.

विविध संस्थांचे एकत्रित करून येणारे दाखले हे एकाच आर्थिक वर्षाचे ग्राह्य धरणेत येतील वर्क ओर्डर सनदी लेखापाल (CA) आणि इतर आर्थिक स्वरूपाचे दाखले कामाचे अनुभवासाठी ग्राह्य धरले जाणार नाही. अनेक वर्षांचे एकत्रित करून सादर केलेले दाखले ग्राह्य धरणेत येणार नाही. 'm' मध्ये नमूद सदर प्रमाणपत्रे / अनुभवाचा दाखला सक्षम प्रधीका-याने दिलेला असावा आणि समक्ष प्राधिकारी पदाचा दर्जा उप आयुक्त व समकक्ष दजपिक्षा कमी दर्जाचा असू नये. उपरोक्त सर्व कागदपत्रे ई- टेंडरिंग द्वारे तसेच सुरक्षा विभागात साक्षांकित प्रती देणेत याव्यात.

13. The Tender was invited by the Municipal Corporation for provision of helpers to assist security guards deployed for protecting the municipal properties. The tender is for provision of 1194 helpers on contract basis for a period of three years. The estimated value of the work is indicated in the tender document at Rs.1,16,13,84,696/-. Under Clause 3(m) of the tender document, it was mandatory for the bidders to fulfill the criteria of having completed the work of provision of helpers to security guards to government/ semi government organisations in past 7 years equivalent to the work prescribed in sub-clauses (a), (b) and (c). The requisite experience prescribed is as under :-

- (i) Under Clause 3(m)(a) the prescribed eligibility criteria was execution of three works of 40% estimated annual value plus provision of 478 helpers to security guard.

or

(ii) Under Clause 3(m)(b) the bidders could satisfy the report of having executed two works of 50% of the estimated value plus provision of 597 helpers to security guards.

or

(iii) Under Clause 3(m)(c) the bidders could fulfill the criteria of having executed one similar work of 80% of the estimated value and provision of 955 helpers to security guards.

It was open to the bidders to fulfill any one of the conditions prescribed under Clauses 3(m)(a), 3(m)(b), 3(m)(c) on account of use of the word 'or' between Clauses (a), (b) and (c). The tender condition below Clause 3(m)(c) also prescribed that certificates issued by different organisations would be consolidated and considered for one financial year.

14. In support of its bid, the Petitioner relied upon Certificate dated 5 September 2024 issued by the Respondent-Municipal Corporation, which reads thus :-

Pimpri Chinchwad Municipal
Corporation Pimpri, Pune-18,
Security Department

No. SUVI/03/KAVI/413/2024

Date: 05/09/2024

To,
M/s. National Security Services,
Datta Nivas, Deep Bunglow
Chowk, Shivaji Nagar, Pune-
411016.

Sub: Experience Certificate for Outsourcing
Service of Security arrangements.

Ref: Your Office Letter Dt. 05/09/2024

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s. National Security Services. Having its registered office at Datta Nivas Deep Bunglow Chowk, Shivaji Nagar, Pune 411018 has been awarded the contract for service of Security arrangements by providing Manpower on outsourcing basis at different revenue locations within limit of Pimpri Chinchwad Municipal Corporation i.e. Tax Collection Ward Office, Water Supply & Workshops Etc.

The actual amount paid for the period of 16/02/2019 to 31/03/2023 Is as below: -

Sr. No	Subject of work order	Time period	No of Rakhwaldar Madatnis	Order Amount
1	Provide Rakhwaldar Madatnis Security in PCMC	16/02/2019-15/02/2020	882	22,98,70,932/-
2	Provide Rakhwaldar Madatnis Security in PCMC	16/02/2020-15/02/2021	885	24,44,51,160/-
3	Provide Additional Rakhwaldar Madatnis (Security) in PCMC COVID-19	19/03/2020-31/03/2021	25 21 66 57	69,05,400/- 58,00,536/- 55,07,356/- 54,22,752/-
4	Provide Rakhwaldar Madatnis (Security) in PCMC COVID-19	16/02/2021-28/02/2022	315+20	8,93,90,062
5	Provide Traffic Warden in PCMC	16/02/2021-28/02/2022	88	2,41,58,101
6	Provide Rakhwaldar Madatnis (Security) in PCMC COVID 19	16/02/2022-28/02/2023	335+20	9,76,53,840+ 38,00,993
7	Provide Traffic Warden in PCMC	16/02/2022-28/02/2023	88	2,56,56,52,352

M/s. National Security Services has successfully completed the tenure of project & we found their services satisfactory.

This certificate is issued on request by M/s. National Security Services.

(Uday Jarande)
Chief Security Officer
Pimpri Chinchwad Municipal
Corporation
Pimpri, Pune-18

15. Petitioner also relied upon 12 individual work orders issued in its favour during the year 2020-21 and claimed that it has provided 1413 helpers to security guards for Respondent-Municipal Corporation during that year. Petitioner contended that he fulfills the criteria prescribed under Clause 3(m)(c) of Tender document of having executed one similar work order of 80% estimated value and provision of 955 helpers to security guards.

16. Respondent-Municipal Corporation has proceeded to reject Petitioner's contention by impugned order dated 22 April 2025. Relevant portion of the said order reads thus :-

मी आयुक्त, पिंपरी चिंचवड महानगरपालिका मा. उच्च न्यायालयाचे आदेशानुसार सदर संस्थेचे म्हणणे ऐकून घेतले, सदर संस्थेने उल्लेखित निविदेकारिता अर्ज करताना वरील अनुक्रमांक १,३,४ व ५ चे कागदपत्रे जोडले होते. त्यामध्ये निविदा क्र २/२०२४-२५ निकषानुसार ते पात्र होत नव्हते. सुनावणी दरम्यान त्यांनी सादर केलेले अनुक्रमांक १ ते १२ चे कार्यदेश तपासले असता ते सर्व मुळ कार्यदेश व मुदतवाढीचे कार्यदेश यामध्ये मनुष्यबळ पुरवलेली संख्या निविदेतील अट क्र ३ m. क चे निकष पूर्ण करत नाही. त्यांनी किमान ९५५ रखवालदार "मदतनीस" पुरविले बाबत चा एक कामाचा कार्यदेश व अनुभव प्रमाणपत्र सादर केलेले नाही. सदर संख्या विविध आदेशांचे एकत्रीकरण करून मान्य करता येऊ शकत नाही. त्यामुळे सुरक्षा विभाग निविदा क्र २/२०२४-२५ अट क्र ३ m. क. नुसार सदर संस्था निविदा प्रकीयेमध्ये अपात्र ठरत आहे

17. Respondent -Municipal Corporation has accordingly observed in the impugned order dated 22 April 2025 that the 12 work orders relied upon by Petitioner do not fulfill the eligibility criteria prescribed in Clause 3(m)(c) of the Tender document. It is observed in the impugned order that Petitioner did not produce work order and experience certificate of '*singular work*' of having provided 955 helpers to security guards. Respondent-Municipal Corporation has refused to add up the number of security guards provided under the 12 work orders. Accordingly, the Petitioner is held disqualified for having failed to meet eligibility criteria prescribed in Clause 3(m) of the Tender document.

18. In the light of the above position, the short issue that arises for consideration is whether the Petitioner's eligibility under Clause 3(m)(c) to the Tender document can be considered by combining the number of helpers to security guards involved in 12 work orders issued to him during 2020-21. It appears that the highest number of helpers deployed by the Petitioner in respect of a singular work order are in respect of three work orders dated 19 March 2020, 16 June 2020 and 2 March 2021 under which he had deployed 875 helpers for the Respondent No.2-Municipal Corporation. However if all the work orders are taken as a whole, it is the contention of Petitioner that the total helpers provided by it are 1413.

19. Reply filed on behalf of the Respondent-Municipal Corporation does not really deal with the aspect of consolidation of

number of helpers to security guards under different work orders relied upon by the Petitioner. The entire Affidavit is silent on this vital aspect though the same is the only issue involved in the present Petition. In fact, the Respondent No.2-Municipal Corporation has raised baseless contentions in paragraphs 18 and 19 of its Affidavit as under :-

18. I say that thus the present petition is not maintainable and no relief as is prayed for can be granted to the Petitioner in view of the settled legal principle of Constructive Res Judicata.

19. I say that tender condition 3M comprises of sub conditions i.e. 3(m)(a), 3(m)(b) & 3(m)(c). Petitioner cannot be permitted to prefer different writ petitions for assailing the decision of PCMC in respect of two sub conditions of 3M i.e. 3(m)(a), 3(m)(b) and a separate writ petition for assailing condition 3(m)(c).

20. The above contentions raised by Respondent No.2-Municipal Corporation are in the teeth of liberty granted by this Court in paragraphs 14 and 15 of order dated 25 March 2025 to the Petitioner to produce additional documents and for reconsideration of decision for considering its eligibility under Clause 3(m)(c) of the Tender document. Despite this Court directing consideration of case of the Petitioner in the light of the eligibility criteria in Clause 3(m)(c) of the Tender document and despite the Respondent-Municipal Corporation reconsidering and affirming its earlier decision vide 22 April 2025, it has proceeded to raise the objection of constructive *res judicata* that Petitioner cannot be permitted to file a separate Petition to demonstrate fulfillment of condition in Clause 3(m)(c) of the Tender document. This Court takes adverse notice of the Affidavit-

in-Reply filed on behalf of Respondent No.2- Municipal Corporation. Instead of demonstrating as to how Petitioner does not fulfill the eligibility criteria prescribed under clause 3(m)(c) of the Tender document, Respondent-Municipal Corporation has raised baseless contention of constructive *res judicata*, which deserves outright rejection. Thus the reply filed by the Respondent-Municipal Corporation does not throw any light on the aspect of permissibility to add up the number of helpers covered by the 12 work orders relied on by the Petitioner.

21. As observed above, there is an overriding stipulation below Clause 3(m) of the Tender document, which provides for consolidation of certificates issued by different institutions for the purpose of fulfillment of eligibility criteria in the singular financial year. The only prohibition in the said condition is for consolidation of certificates of different financial years. In the present case, all the 12 work orders relied upon by the Petitioner are in respect of singular financial year viz. 2020-21 under which Petitioner has provided total number of 1413 helpers to security guard to the Respondent-Municipal Corporation. In the light of permissibility to consolidate multiple experience certificates issued by different organisations in the same financial year, we do not see any valid reason as to why the total number of security guards covered by 12 work orders issued to the Petitioner during financial year 2020-21 by the very same Municipal Corporation cannot be considered for examining Petitioner's eligibility in the impugned Tender process.

22. In our view therefore, since total number of 1413 helpers to security guards are provided by the Petitioner by virtue of 12 work orders issued to him during financial year 2020-21, Petitioner fulfills the eligibility criteria of provision of 955 helpers to security guards prescribed under Clause 3(m)(c) of the Tender document. The impugned order dated 22 April 2025 as well as the Affidavit-in-Reply filed on behalf of Respondent No.2 does not state that the value of work executed by the Petitioner is less than 80% of the estimated Tender work. In that view of the matter, we are satisfied that Petitioner fulfills the eligibility criteria prescribed under Clause 3(m)(c) of the Tender document. The rejection of Petitioner's technical bid is therefore unsustainable and liable to be set aside.

23. We accordingly proceed to pass the following order :-

- (i) Order dated 22 April 2025 passed by Commissioner of Respondent No.2-Municipal Corporation is set aside.
- (ii) It is declared that Petitioner fulfills eligibility criteria prescribed in Clause 3(m)(c) of the Tender document.
- (iii) Respondent No.2-Municipal Corporation shall accordingly proceed to consider the financial bid of the Petitioner along the other eligible bidders.

24. With the above directions the Petition is **allowed**. Considering the facts and circumstances of the case there shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE).

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SHREEDHAR
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Digitally
signed by
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