IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9039 OF 2025

1. Jayshanker Enterprises]
Pro. Uttam Ram Dhotre,]
Age 55 years Occu : Business]
R/o. Market Yard Road, Baramati]
Dist. Pune.]

2. Shri Mahakaleshwar Labour Suppliers]
Vallab Madhav Malgude, Age-30 years,]
Occu. Business, R/o. Jalochi, Baramati,]
Dist. Pune] ...Petitioners.

V/s

1. State of Maharashtra]
Through its Principal Secretary]
Urban Development Department,]
Mantralaya, Mumbai.]

2. Chief Officer (Class-A)]
Municipal Council, Baramati,]
District – Pune.]

3. Superintendent,]
Garden Department Municipal Council,]
Baramati, Dist-Pune]

4. M.G.P. Infra Pvt. Ltd.,]
Through Proprietor Mangesh Sanjay More]
Address: Dorlewadi, Baramati, Pune.]

5. Chandsha Labour Suppliers]
Through Proprietor Jamir Jotali Sayyad]
Mahada Colony, Near Chandsha Darga,]
Baramati, Pune.] .... Respondents.

Mr. Sushant Prabhune alongwith Mr. Rushikesh Jadhav, advocates for the petitioner.
Ms. Neha S. Bhide, GP with Mr. O. A. Chandurkar, Add. GP with Mrs. G. R. Raghuwanshi, AGP for the respondent no.1.
Mr. S.R. Nargolkar & Ms. Neeta Patil, advocates for the respondent nos. 2 and 3.

Mr. Dhananjay K. Bhosale i/b Mr. N.V. Gaikwad, advocates for the respondent no.4.

CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.

DATE : 24TH SEPTEMBER 2025.

Per, Shree Chandrashekhar, CJ

Writ Petition No.6247 of 2025 was laid by the Jayshanker Enterprises through its proprietor Uttam Ram Dhotre with the following prayers:-

"a) This Hon'ble Court be pleased to call for relevant record and proceedings from the office of respondent No. 2 & 3 and after going through legality, validity and propriety of the same, quash and set aside Tender process in pursuance of E-Tendering proclamation no. 1/2024 (online) dtd. 23.09.2024 and also further declaring respondent no. 4 and 5 as successful bidder by order dtd. 28.04.2025 on online portal of E-Tendering.

b) This Hon'ble Court be pleased to further direct the Respondent No. 2 & 3 tendering authority to issue fresh Tender Notice to supply of unskilled labour as per requirement on annual contract basis for maintenance of various parks, trees planted on dividers and open spaces in Baramati Municipal Council area in strict compliance of the various norms set out by State Government by way of various Government Resolutions and Rules described in the Writ Petition.

c) This Hon'ble Court further be pleased to direct the Respondent No. 2 & 3 tendering authority to issue fresh Tender Notice to supply of unskilled labour as per requirement on annual contract basis for maintenance of various parks, trees planted on dividers and open spaces in Baramati Municipal Council area in strict compliance of the various norms set out by State Government by way of various Government Resolutions and Rules described in the Writ Petition.

d) Pending the hearing and final disposal of this writ petition restrain the respondent no. 2 by appropriate order of an injunction from taking further steps in pursuance to declaration on online portal on 28.4.2025 thereby accepting bids of respondent no. 4 and 5 including grant of permission to start work.

e) Pending the hearing and final disposal of this writ petition stay the execution, implementation and/or operation of online portal update on 28.4.2025 thereby accepting bids of respondent no. 4 and 5.

f) Interim/ad interim relief in terms of prayer clauses (d) and (e) above be granted."

g) Such other and further relief as the Hon'ble Court may deem fit and proper be kindly granted."

2. In the said writ petition, the following order was passed on 7th May 2025:-

"1. Learned counsel for the petitioners after arguing the matter to some extent seeks leave to withdraw the writ petition with liberty to submit a fresh representation to respondent Nos.2 and 3.

2. Needless to state that in case such a representation is filed, it will be open for respondent Nos.2 and 3 to consider the same and pass appropriate orders.

3. It is made clear that this Court has not expressed any opinion on merits of the case.

4. Accordingly, the writ petition is disposed of as withdrawn."

3. However, the respondent nos. 2 and 3 did not consider the representation moved on behalf of the Jayshankar Enterprises and its Chief Officer. They have, therefore, now approached this Court with the following prayers in the present petition:-

"a) This Hon'ble Court may be pleased to direct the Respondent no.2 and 3 to decide the representation dated 9/5/2025 filed by the Petitioners expeditiously within a time bound manner; In the alternative;

b) This Hon'ble Court be pleased to call for relevant record and proceeding from the office of Respondent No.2 & 3 and after going through legality, validity and propriety of the same, quash and set aside Tender process in pursuance of E-Tendering proclamation no. 1/2024 (online) dtd. 23.09.2024 and the Work Order dated 22/4/2025 and also further declaring respondent no. 4 and 5 as successful bidder by order dtd. 28.04.2025 on online portal of E-Tendering.

c) This Hon'ble Court be pleased to further direct the Respondent No. 2 & 3 tendering authority to issue fresh Tender Notice to supply vehicle drivers for supplying daily drinking water to trees and citizen's parks, dividers and open spaces in Baramati Municipal Council area (skilled workmen), yearly contract method for supply as per requirement in strict compliance of the various norms set out by State Government by way of various Government Resolutions and Rules described in the Writ Petition.

d) This Hon'ble Court further be pleased to issue appropriate directions for conducting an inquiry into the illegal activities of the Respondent No. 2 & 3 tendering authority during the subject Tender process;

e) Pending the hearing and final disposal of this writ petition restrain the respondent no. 2 by appropriate order of staying the Work Order dated 22/4/2025.

f) Interim/ad interim relief in terms of prayer clauses (e) above be granted.

g) Such other and further relief as the Hon'ble Court may deem fit and proper be kindly granted."

4. The prayer at Clause (a) in the previous writ petition vide Writ Petition No.6247 of 2025 seeks a declaration that the decision of the respondent-Authority to hold that the respondent nos. 4 and 5 are the successful bidders is not correct and warrants interference of this Court. The other prayers were regarding the fresh tender notice and for a restraint order from taking further steps pursuant to online declaration on 28th April 2025.

5. In the present writ petition, a similar prayer has been made by the petitioner-firm for setting aside the tender process and the declaration of the respondent nos. 4 and 5 as successful bidder. Similarly, prayers at prayer Clauses (c) and (d) have been framed for a direction to the tendering authority to issue a fresh tender notice. The learned counsel for the petitioner-firm submits that there are additional prayers made by the petitioner-firm in this writ petition seeking an inquiry in the matter as to illegality committed by the respondent nos. 2 and 3 and for staying implementation of the work order. However, in our opinion, the present writ petition with such prayers is not maintainable and liable to be dismissed at the threshold. By adding a few more prayers, the petitioner-firm cannot be permitted to seek indulgence of this Court in the matter which was argued before the Court and permitted to be withdrawn. As we gather from the order dated 7th May 2025, it was on the request of the learned counsel for the petitioner-firm that the permission was granted to withdraw the writ petition with liberty to it to submit representation before the respondent nos. 2 and 3. We may also indicate that the permission to withdraw Writ Petition No.6246 of 2025 was only to enable the petitioner-firm to make representation

before the respondent nos. 2 and 3.

6. The learned counsel for the petitioner-firm, however, endeavoured to persuade this Court to interfere in the matter because exclusion of the petitioner-firm on the ground that it had not complied with the provisions of the Minimum Wages Act, 1948 is wrong and patently illegal. However, this issue is not required to be gone into the facts of the present writ petition and, in particular, the minuscule difference in the bids offered by the parties.

7. We have glanced through the proceedings dated 3rd March 2025 which record that the petitioner-firm offered its bid for the value of Rs. 955.61 per day and 4th respondent, that is, M.G.P. Infra Pvt. Ltd. submitted its bid for Rs. 955.67 per day. Quite clearly, there is a difference of 6 paise in the bid offered by the petitioner-firm pursuant to the notice dated 23rd September 2024. This is now quite well settled law that the Employer shall have liberty in the matter of finalizing the tender and selecting the contractor for smooth execution of the work. The decision of the Employer to offer work under contract to 4th respondent-M.G.P. Pvt. Ltd. cannot be held to be illegal or irrational only because its offer price was 6 paise higher than the bid offered by the petitioner-firm. We may further indicate that even L-1 bidder has no vested right to claim that work under the tender must be allotted to him.

8. It is now well settled law that an award of a contract pursuant to NIT is essentially a commercial transaction. The State can choose its own method to arrive at a decision. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is only one of them. It may not accept the offer, even though it happens to be the highest or the lowest. Though that decision is not

amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. As held above, we do not find any illegality in the award of present tender. The law in this regards is settled by the Hon'ble Supreme Court in a catena of judgments including in *"Raunaq International Ltd. v. I.V.R. Construction Ltd."* (1999) 1 SCC 492 wherein the Hon'ble Supreme Court held as under:-

> *"16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work — which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee."*

9. For the aforesaid reasons, Writ Petition No.9039 is dismissed.

[GAUTAM A. ANKHAD, J.] **[CHIEF JUSTICE]**

BHARAT DASHARATH PANDIT

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