

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

WRIT PETITION NO.16005 OF 2025

Ashirwad Infraventure and Consultancy .. Petitioner
Vs.
State of Maharashtra,
Through the Settlement Commissioner &
Director of Land Records, Pune and Anr. .. Respondents

Mr. Sanjeev B. Deore with Mr. Vishal Thakur, Mr. Arman Ansari,
i/by Ms. Suchita J. Pawar, Advocates for the Petitioner.

Mrs. Neha S. Bhide, Government Pleader with Mrs. Apurva
Thipsey, "B" Panel Counsel for the Respondents.

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

DATE : 27TH NOVEMBER 2025.

P.C. :

The petitioners have assailed the tender conditions in this petition issued by respondent no. 1 and have sought the following reliefs:-

- a. *This Hon'ble Court be pleased to exercise the jurisdiction vested in it under Art 226 of Constitution of India and issue a writ of mandamus/certiorari or any other appropriate direction/writ/order whereby quashing and setting aside the condition of only Window as operating system for the controllers as specified in clause to Annexure-VI of technical specification in the E-tender notice dated 26.09.2025 and further directing the Respondent No.1 to include Android as operating system for the controllers which will be read as Window or Anroid (At Ex-A).*
- b. *This Hon'ble Court be pleased to exercise the jurisdiction vested in it under Art 226 of Constitution of India and issue a writ of mandamus or any other appropriate directions/writ/order whereby quashing and setting aside the condition included in clause 4 PQ 10 which mandate the condition of 07 yrs and more of existence for the OEM i.e. Original Equipment manufacture and further directing the Respondent No-1 to reduce the said period from 07 yrs and more to 05 yrs which shall read as mandate condition for existence shall be 03 to 05 yrs and which shall pave the way for healthy competition.*

- c. *This Hon'ble Court be pleased to exercise the jurisdiction vested in it under Art 226 of Constitution of India and issue a writ of mandamus or any other appropriate direction/writ/order whereby directing the Respondent No-1 to include the bidder along with the OEM also in the clause 4 PQ 10 which only mandate the existence of the OEM i.e. Original Equipment manufacturer."*

2. Mr. Sanjeev B. Deore, learned counsel for the petitioner-Firm, submits that the petition is now restricted to seeking a direction to the employer to include "*Android*" as an operating system for the controllers, and consequently, Clause 10 of Annexure VI (page 56 of the paper-book) be modified to read: "*Windows 11 Pro or higher, or Android*". He submits that Android is an equally viable alternative operating system and its inclusion would enable other similarly placed companies to participate in the tender process. This would enhance competition and ultimately benefit the authority through more competitive pricing. He contends that the condition mandating "*Windows 11 Pro or higher*" is arbitrary and tailor-made to favour only two specific companies. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation & Ors.*, (2000) 5 SCC 287, to submit that the tender deserves to be quashed so as to secure maximum participation.

3. Ms. Neha Bhide and Ms. Apurva Thipse, learned counsel for the respondents oppose the petition and submit that the impugned tender condition is neither arbitrary nor *mala fide*. They contend that this Court ought not to interfere in contractual matters involving technical specifications.

4. To begin with, we would indicate that the powers of the writ Court under Article 226 of the Constitution of India to examine a

tender condition is extremely limited. A writ Court cannot rewrite the terms of a tender. It is equally well settled that the Court, in exercise of its jurisdiction of judicial review, cannot enter into technical considerations or render an opinion as to whether one technological system is preferable over another for the purposes of a particular project. Matters concerning the suitability, viability, and technical appropriateness of a system lie squarely within the domain and discretion of the employer. Being the author of the tender, the employer is best placed to evaluate the feasibility and utility of its stipulations. In “*Michigan Rubber (India) Ltd. v. State of Karnataka*” (2012) 8 SCC 216, the Hon’ble Supreme Court held:

From the above decisions, the following principles emerge:

- (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*
- (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*
- (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found*

to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

- (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*
- (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.*

5. It is settled law that in the matters of formulating conditions of a tender document, greater latitude is required to be conceded to the State authorities. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. In *Directorate of Education v. Educomp Datamatics Ltd.*, (2004) 4 SCC 19, the Hon'ble Supreme Court held as follows:

“12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.”

6. The Hon'ble Supreme Court expressed a word of caution in the contract matters involving technical issues and has held that the Courts must realise their limitations and the havoc which may

be caused due to interference in commercial matters. It was held as follows:

“19. *This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain.”*

7. Mr. Deore's reliance on “*Monarch Infrastructure*” is misplaced. In the said case, the Municipal Corporation had deleted an eligibility condition after the expiry of the time-limit for the submission of tenders but before the opening thereof. The tender was then awarded to the tenderer who was not eligible as per the deleted condition. It was in that circumstance that the Hon'ble Supreme Court held that the action of the State in awarding of tender was arbitrary. The Hon'ble Supreme Court has reiterated the settled principle of law that the Courts may not interfere with the administrative actions of the state unless action is arbitrary, discriminatory or the policy has no nexus with the object it seeks to achieve or is *mala fide*.

8. Leaving aside all these limitations in exercise of the powers by the writ Court under Article 226 of the Constitution of India,

this writ petition is liable to be dismissed also on the ground that it seems to be a chance litigation. The e-tender for procurement of 1200 GNSS Rovers, Controllers and Post Processing Software, 2025 was issued on 26th September 2025 and this writ petition has been filed on 20th November 2025.

9. Quite apparently, this Writ Petition No.16005 of 2025 lacks *bona fide* and is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]