IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6741 OF 2025

M/s. Sainath Grain Traders
Pvt. Ltd. ***….Petitioner***

: Versus :

State of Maharashtra & Ors. ***….Respondents***

WITH

INTERIM APPLICATION NO. 8856 OF 2025

Bhrashtachar Nivaran Samiti ***...Intervenor/ Applicant***

<u>In the matter between :</u>

M/s. Sainath Grain Traders
Pvt. Ltd. ***….Petitioner***

: Versus :

State of Maharashtra & Ors. ***….Respondents***

Ms. Pradnya Talekar *with Ms. Sulakshana Ghule i/by. Talekar & Associates, for the Petitioner.*

Mr. Mihir Desai, Senior Advocate *i/by. Mr. Siddheshwar N. Biradar, for the Applicant in Interim Application No. 8856/2025.*

Mr. P.P. Kakade, Additional Government Pleader *with Mrs. R.M. Shinde, AGP for Respondent Nos.1 and 2-State.*

Ms. Pooja Patil *with Mr. Nakul Jain, Mr. Nivit Srivastava, Ms. Sneha Patil, Mr. Rohit Bamne and Ms. Bhavya Shah i/by. Maniar Srivastava Associates, for Respondent No.3.*

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

DATED : 7 JULY 2025.

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

1) Petitioner has filed the present petition challenging the decision of the tendering authority in holding the technical bid of the Respondent No.3 as qualified. Upon seeking disqualification of Respondent No.3, Petitioner has sought direction for consideration of its financial bid and for award of contract to it.

2) Brief facts leading to filing of the present petition are as under :-

Respondent No.2 published E-Tender Notice Requesting for Proposal dated 27 January 2025 for transportation of rice and coarse grains from Food Corporation of India godowns to school/central kitchen under the Pradhan Mantri Poshan Shakti Nirman Yojana Scheme. Petitioner, as well as Respondent No.3 participated in the tender process by submitting their respective bids. The technical bids were opened on 3 March 2025 on the official website for objections by the bidders. Petitioner raised an objection on 6 March 2025 to the technical bid submitted by Respondent No.3, particularly with regard to the documents accompanying the bid. On 15 March 2025, Petitioner once again filed objection to the technical bid of Respondent No.3. Petitioner received the email on 5 May 2025 inviting it for scrutiny to technical bids scheduled to be held on 6 May 2025. According to the Petitioner, technical scrutiny did not take place on 6 May 2024 nor the financial bids were opened. Petitioner therefore submitted application on 6 May 2025 for decision of its objections. It also served a legal notice on 14 May 2025. Petitioner received email on 15 May 2025 from Respondent No.2 intimating that the meeting of State Level Purchase Committee was scheduled to be held on 16 May 2025 for opening of financial bids. Petitioner's representative personally attended the meeting on 16 May 2025 when Petitioner was orally informed that all the three bids were found technically qualified. The result of technical bids was uploaded on the official website on 16 May 2025. The minutes of the meeting were neither supplied to the Petitioner nor uploaded on the website. Petitioner believes that the minutes were never prepared on 16 May 2025. The financial bids were open immediately on 16 May 2025 and Respondent No.3 was declared 'L-1', Petitioner as 'L-2' and another entity as 'L-3'. Petitioner has accordingly filed the present petition on 19 May 2025 challenging the decision of Respondent No.2 in holding the technical bid of Respondent No.3 as qualified.

3) The petition was moved before the Vacation Court and an interim order dated 29 May 2025 was passed noting grievance of the Petitioner that the objection raised by it against technical bid of Respondent No.3 remained undecided. This Court therefore directed that the final decision regarding award of contract be not taken till the next date of hearing. The interim stay granted by this Court was discontinued by this Court by order dated 11 June 2025 after noticing stand of the tendering authority that the objection raised by the Petitioner was already decided on 16 May 2025. Since the pleadings are complete, the petition is taken up for final disposal.

4) Ms. Talekar, the learned counsel appearing for the Petitioner would submit that the bid submitted by Respondent No.3 was not compliant with the essential and mandatory conditions stipulated in the tender document and that the tendering authority has illegally qualified the technical bid of Respondent No.3 by ignoring the objections raised by the Petitioner. She would submit that the tender condition required Certificate of Chartered Accountant reflecting minimum average turnover for the Financial Years 2021-22, 2022-23 and 2023-24 with valid UDIN. That the Certificate produced by Respondent No.3 alongwith UDIN did not reflect the turnover figures in respect of the Financial Year 2023-24. Referring to the relevant conditions in the tender document requiring rejection of bid for non mentioning of UDIN, she would submit that the bid of Respondent No.3 ought to have been rejected. In support, she would rely upon judgments of the Delhi High Court ***M/s. Sunshine Caterers Private Limited Versus. Union of India through Ministry of Railways and Anr.***[1] and of Allahabad High Court in ***M/s. Arth Enterprises and Anr. Versus. State of Uttar Pradesh and Ors.***[2] and of Jammu and Kashmir High Court in ***M/s. TRG Industries Pvt. Ltd Versus. UT of Jammu and Kashmir through Commissioner Secretary to Government and Ors.***[3]

5) She would submit that Respondent No.3 made a false declaration of it not being debarred or terminated in the Affidavit. That the bidders were required to submit Affidavit in format declaring whether the bidder was de-registered/de-barred/blacklisted/ suspended and the bid was liable to be rejected if the declaration was found to be false. She would submit that contract of Respondent No.3 was terminated by the Chief Workshop Manager, Carriage Repair Workshop, Lower Parel, Western Railway, Mumbai which information was suppressed by Respondent No.3. That termination of contract is nothing but permanent suspension thereof. That suspension of contract is a genus whereas termination is a specie thereof. That by order dated 15 December 2023 passed in Writ Petition No.3052/2023, decision to terminate the contract has not been disturbed. That Respondent No.3

1 WP(C.) 4628/2024 & CM Appl.18999-19000/2024 decided on 1 April 2024
2 2024 AHC 7140-DB
3 WP(C)-2910/2022 decided on 22 March 2024.

was therefore liable to be disqualified on account of making false declaration and suppressing the vital information. Ms. Talekar, would further submit that Respondent No.3 did not comply with the condition of signing every page/self-attestation and notarization as mandatorily required. That submission of incomplete documents ought to have entailed rejection of the technical bid of Respondent No.3. Lastly, Ms. Talekar would submit that Petitioner's objections regarding disqualification of Respondent No.3 were not decided. That the document indicating decision of Petitioner's objections has been subsequently prepared bearing a back date as the alleged decision dated 16 May 2025 was never dispatched or transmitted or communicated to the Petitioner before 2 June 2025. On the above broad submissions, Ms. Talekar would pray for setting aside the decision of qualification of technical bid of Respondent No.3.

6) The petition is opposed by Mr. Kakade, the learned Additional Government Pleader appearing for Respondent Nos.1 and 2. He would submit that all objections raised by the Petitioner were duly considered and rejected in minutes of the meeting held on 16 May 2025. That the objection of C.A. Certificate not bearing UDIN is fallacious in that the certificate not only bears the UDIN but Respondent No.3 submitted the audited Balance Sheets for the relevant years from which the turnover figures could easily be ascertained. That there is no order blacklisting/debarring Respondent No.3. That the objection of non-attestation of some of the documents is fallacious in the light of scanning and uploading of original documents by Respondent No.3. In any case, the copies of documents relied upon by Respondent No.3 have been verified in the meeting held on 16 May 2025. That the tendering authority has framed a judicious opinion that Respondent No.3 qualifies all the eligibility criteria prescribed. He would accordingly pray for dismissal of the petition.

7) Ms. Pooja Patil, the learned counsel appearing for Respondent No.3 would also oppose the petition submitting that none of the objections sought to be raised by the Petitioner with regard to the eligibility of Respondent No.3 are valid. She would submit that Petitioner's objections have been rejected vide order/decision dated 16 May 2025 and despite the liberty granted by this Court to challenge the said order, Petitioner has not amended the petition so as to challenge the said order. She would submit that Respondent No.3 has not been debarred or blacklisted as its blacklisting was initially set aside and later confined to the work/service which was to be tendered only in Carriage Repair Workshop, Lower Parel without any application to any other division or organisations in the Railways. That the Account Statements of Respondent No.3 have been seen and verified by the tendering authority and the objection of UDIN sought to be raised by the Petitioner in respect of the Chartered Accountant Certificate is totally baseless. That Respondent No.3 uploaded scanned original documents and therefore objection of absence of self-attestation is totally baseless. She would pray for dismissal of the petition.

8) We have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through the records of the case filed alongwith the pleadings.

9) Respondent No.3 has been adjudged L-1 after opening of financial bids. Petitioner is adjudged L-2. The Petitioner is therefore attempting to knock-off the bid of Respondent No.3 under the hope of improving its position from L-2 to L-1. There appears to be substantial difference between the quotation given by the Petitioner and Respondent No.3. Petitioner has quoted the rate of Rs.23/- per kilometer for transportation of grains, whereas Respondent No.3 has quoted the rate of Rs.14/- per kilometer. The tendering authority has considered the financial bids of all the bidders after which Petitioner, Respondent No.3 and one more entity were found technically qualified. After opening of financial bids, decision was taken to award contract to Respondent No.3, who is found to be the lowest bidder.

10) After realizing that bid of the Petitioner is not the lowest, it has attempted to find faults in the technical bid submitted by Respondent No.3 under a hope that the Petitioner would attain the status of L-1 after rejection of bid of Respondent No.3.

11) The first objection of the Petitioner is that Respondent No.3 violated Clause-5.2(vi) of tender document, which required submission of Chartered Accountant Certificate showing minimum average turnover in the Financial Years 2021-22, 2022-23 and 2023-24 with valid UDIN. Reliance is placed on Clause-5.1(i) of the tender document which stipulated that financial bids of only such bidders would be opened who fulfilled the qualification criteria, as well as other details in the bid document. That Clause also stipulated that the bidder must demonstrate average annual turnover of Rs.2.00 crore for Mumbai District, during financial years 2021-22, 2022-23, 2023-24. Reliance is also placed on Clause-5.2(x) in support of the contention that non-mentioning of UDIN was stipulated as a ground for rejection of the bid. After relying on the above clauses of tender document, our attention is invited to the Certificate issued by the Chartered Accountant of Respondent No.3 on 8 February 2025 showing the turnover for the years 2020-21 to 2023-24 with UDIN being reflected on the said Certificate. Our attention is then invited to the printout of the page from the website of the Institute of Chartered Accountants of India corresponding to the UDIN of the concerned Chartered Accountant reflecting turnover figures of only 2020-21, 2021-22 and 2022-23. It is contended that the UDIN uploaded on the Website does not contain turnover details of the year 2023-24. It is therefore suggested that there is mismatch between the Certificate and UDIN. This discrepancy is highlighted for rejection of the technical bid of Respondent No.3 under Clauses 5.2(vi) and 5.2(x). In the minutes of the meeting held on 16 May 2025, the above objection of Petitioner has been rejected by holding that Respondent No.3 satisfied the turnover criterial in one Financial Year 2022-23. Even going by ICAI Website information, Respondent No.3 had turnover of Rs.6.78 crores in 2022-2023 as against requisite turnover of Rs.2 crores.

12) It has also come on record that Respondent No.3 submitted the Balance Sheet and other account documents in respect of the relevant Assessment Years and the tendering authority was thus presented with all the necessary underlying documents for verifying turnover of Respondent No.3. Petitioner however insists that Respondent No.3 has violated the mandatory tender condition of non-reflection of its turnover details in UDIN, C.A. Certificate for the year 2023-24 and that therefore its bid ought to have been rejected. What is contended essentially is that the turnover figures for 2023-24 are reflected in the CA Certificate dated 8 February 2025 and that though the said C.A. Certificate contains UDIN, upon verification of the concerned documents on the Website of ICAI, it is found that turnover figures of only Financial Years 2020-21, 2021-22 and 2022-23 are reflected meaning thereby that the C.A. Certificate dated 8 February 2025 does not match with the one in respect of which UDIN is generated. In the light of the above position, the issue for consideration is whether interference in decision of the tendering authority in holding Respondent No.3 as technically qualified by considering the turnover figures reflected in Balance sheets, is warranted. The answer to this question is obviously in the negative. Even if it is assumed momentarily that there is mismatch between C.A. Certificate dated 8 February 2025 and the details of UDIN Certificate uploaded on the website, the tendering authority has considered the turnover figures from underlying documents and has ultimately arrived at the conclusion that the turnover for the year 2022-23 itself crossed the required threshold by atleast three times. In respect of the alleged discrepancy, Respondent No.3 has pleaded in the Affidavit-in-Reply that ICAI Website provides for reflection of figures of only three years on account of which the figures relating to the fourth year of 2023-24 could not be uploaded on the website. The tendering authority has applied its mind to all the relevant documents and has thereafter satisfied itself about Respondent No.3 achieving average annual turnover of Rs.2 crores for Mumbai District during the three relevant financial years. We do not see any element of perversity, arbitrariness or irrationality in the approach adopted by the tendering authority. Since no discrepancy is found in the turnover Certificate, reliance by the Petitioner on judgments of various High Courts in ***M/s. Sunshine Caterers Private Limited*** (supra), ***M/s. Arth Enterprises*** (supra) and ***M/s. TRG Industries Pvt. Ltd.*** (supra) are inapposite.

13) The second ground of attack of Petitioner is about suppression of factum of termination of contract of Respondent No.3 by Railways and alleged falsity in the Affidavit filed by it in Annexure-B format. The format at Annexure-B, which bidders were expected to submit, is extracted below :-

ANNEXURE B: FORMAT OF SELF CERTIFICATE FOR BLACK LISTING

(On non-Judicial stamp of Rs. 500/- with Notarized)

To,
DPEMS
Sub: Certificate.

Ref: RFP No.______________ due on ____________________ .

> We declare that we have not been deregistered or debarred or blacklisted or suspended for the transportation of rice and coarse grain or any State Government/Central Government/Government undertakings/Local Authority till the date of submission of this bid as specified in the NIT. If we, at a later date, are found guilty of suppressing facts in this regard, such act on our part, shall be considered a fraudulent practice in accordance bid and forfeit the earnest money deposit/performance security deposit submitted by us with clause 5.1 (vi) mentioned under RFP and DPEMS shall be entitled to rejection of the against this RFP.
>
> We have also noted that after submission of bid and before award of contract. If we are de-registered or debarred or blacklisted by any State Government/Central Government/Govt. undertaking/Local Authority, our bid will be considered as nonresponsive.
>
> Date: ____________________ (Signature) __________________
>
> Place: ____________________ (Print Name) _________________
>
> (Designation)
>
> ___________________________
>
> (Common Seal)

14) Thus every bidder was required to make a declaration in respect of de-registration/debarment/blacklisting/suspension for transportation of rice and coarse grain contract by any State Government/Central Government/Government Undertakings/local authority. Petitioner contends that the contract of Respondent No.3 with Western Railways was terminated on 5 October 2023. It is Petitioner's case that Respondent No.3 was appointed as Contractor of Western Railways to transport railway material on 17 March 2023 by letter dated 6 September 2023. Western Railways brought to the notice of Respondent No.3 the alleged breaches and by letter dated 5 October 2023, the contract of Respondent No.3 was terminated. Additionally, Respondent No.3 was debarred from participating in the bid for any work tendered by the Railway Division for a period of 2 years. Respondent No.3 challenged the order dated 5 October 2023 in Writ Petition (L.) No. 30562/2023 setting aside the order dated 5 October 2023 only in relation to debarment and it is Petitioner's contention that termination of contract of Respondent No.3 was not set aside and liberty was granted to Respondent No.3 to take recourse to other remedies.

15) It is the contention of the Petitioner that since the termination of contract is not disturbed, the same ought to have been disclosed by Respondent No.3 in its Affidavit. However, there appears to be no requirement of disclosure of termination of contract in the format Affidavit as the declaration was to be made only in respect of absence of deregistration/debarment/blacklisting/ suspension was required to be made. We are not impressed by the submission that suspension of contract is also covered by termination thereof as termination entails permanent suspension. If the tendering authority did not require information relating to termination of contract, such requirement cannot be read into the tender condition by undertaking the exercise of interpretation. The tendering authority has interpreted Annexure-B Affidavit in a manner which does not require disclosure of termination of contract. It is well settled position of law that the tendering authority, being the author of the tender document its interpretation is binding on courts. Reference in this regard can be made to the judgment of the Apex Court in ***Silppi Constructions Contractors Versus. Union of India & Anr.***[4], ***Agmatel India Private Limited Versus. Resoursys Telecom & Ors.***[5] and ***Galaxy Transport Agencies, Contractors, Traders, Transports and Supplies Versus. New J.***

4 (2020) 16 SCC 489

5 (2022) 5 SCC 362

K. Roadways, Fleet Owners and Transport Contractors & Ors.[6]**.** We therefore cannot sit in appeal over the opinion formed by the tendering authority that Annexure-B Affidavit did not require disclosure of information about termination of contract.

16) Yet another aspect highlighted by Petitioner about falsity in Affidavit of debarment is that Respondent No.3 did not disclose the factum of passing of order dated 19 June 2024 by which Respondent No.3 came to be debarred. It appears that after grant of opportunity by this Court in order dated 15 December 2023 passed in Writ Petition (Lodg.) No.30562/2023, the Western Railways passed fresh order dated 19 June 2024 blacklisting the Respondent No.3 which decision came to be challenged in Writ Petition No. 4130/2024 by Respondent No.3. When the said petition came up for hearing on 4 September 2024, the Counsel appearing for Railways made a statement before this Court that the debarment order would be confined only to the work/services which may be tendered by Carriage Repair Workshop, Lower Parel, Mumbai and would have no application so far as the other divisions or organisations of Railways are concerned. The tendering authority has taken note of order dated 4 September 2024 and has observed in the minutes of the meeting dated 16 May 2025 that the debarment was only in respect of the Carriage Repair Workshop, Lower Parel, Mumbai and that the said petition has been disposed of by consent of the parties on 25 September 2024. The tendering authority has thus applied its mind to the objection of debarment and has decided not to give effect to the debarment order issued by the Western Railways in the impugned tender process by taking into consideration the statement made on behalf of Railways that the debarment would not apply for other departments of Railways. If Respondent No.3 could participate in the tenders invited by railways other than workshop, Petitioner cannot

6 2020 SCC Online SC 1035

insist that Respondent Nos.1 and 2 ought to have rejected the bid of Respondent No.3 by taking into account the said debarment order.

17) The judgment of Division Bench of this Court in ***Raut Enterprises, Boisar Versus. Bhabha Atomic Research Centre, Boisar and others***[7] is relied upon in support of the consequence of non-furnishing of declaration of debarment. In the present case, the debarment of Respondent No.3 has been set aside by this Court and therefore the judgment has no application to the facts of the case.

18) The next ground raised by the Petitioners is about the missing pages in the bid of Respondent No.3 and some of the pages not being self attested/not notarized. It is the contention of Respondent No.3 that the scanned copies of original documents were uploaded and there was no necessity of self-attestation of such original documents. It is also pointed out that all the requisite documents were notarised. The tendering authority has considered all the documents submitted by Respondent No.3 and has taken a decision to technically qualify its bid. We cannot sit in appeal over the said judgment exercised by the tendering authority by undertaking the exercise of scanning each and every document and arriving at a conclusion different than the one arrived at by the tendering authority.

19) The judgment of Division Bench of this Court in ***A 2 Z Maintenance and Engineering Services Ltd., Gurgaon Versus. Maharashtra State Electricity Distribution Company Ltd., Mumbai and another***[8] is relied on in support of the contention that essential conditions of eligibility need to be scrupulously complied with by the bidders unless there is specific power of relaxation or waiver of eligibility condition. The judgment is also relied upon in support of

7 2022(4) Mh.L.J. 567
8 2010(5) Mh.L.J. 794

proposition that when condition of tendering document requires an act to be done in a particular manner and lays down the consequences in case of failure to comply with such requirement, the same would result in disqualification of the bid. Though, there can be no dispute about the principles enunciated in the said judgment, we are unable to trace any substantial defect in the documents submitted by Respondent alongwith its bid.

20) The last ground sought to be raised is about the *malafides* in the decision making process while rejecting Petitioner's objections. Petitioner has raised serious allegation of *malafides* against the tendering authority by contending that the decision rejecting objection was deliberately prepared later which infact never existed at the relevant point of time. The allegation of antedating the decision dated 16 May 2025 is also raised by the Petitioner. We find no substance in the said allegations sought to be levelled by the Petitioner. The tendering authority is the Department of the State Government. The technical evaluation is done and minutes of meeting dated 16 May 2025 are prepared by the State Level Purchase Committee comprising of high ranking officials. The tendering authority has taken a stand on Affidavit that the Petitioner was given intimation of opening of financial bids on 16 May 2025. That the Petitioner attended the meeting of 16 May 2025, when the inspection of documents of Respondent No.3 was carried out by Respondent No.2 in presence of all the bidders. It is contended that in that very meeting held on 16 May 2025, all objections of the Petitioner were rejected and there is an allegation of suppression of rejection of objections on 16 May 2025 by the Petitioner while filing the petition. The minutes of the meeting dated 16 May 2025 signed by Chairman and three other members of the tendering Committee are filed alongwith the Affidavit-in-reply. It is difficult to believe that the four different officials belonging to different Departments would conspire together for preparing backdated minutes of meeting aimed solely at defeating the petition of the Petitioner. Petitioner has not alleged personal malafides against the four said officials nor they are impleaded as parties in person. We therefore do not find any substance in the bald and reckless allegations raised by the Petitioner levelling allegations against Respondent No.2.

21) Considering the overall conspectus of the case, we do not find that any valid ground of challenge is made out by the Petitioner to the impugned tender process. The petition must fail. It is accordingly **dismissed.**

22) So far as Interim Application No. 8856 of 2025 is concerned, this dispute is between two bidders and Bhrashtachar Nivaran Samiti who has filed Interim Application No. 8856 of 2025 and has no locus to intervene in the present petition. It is accordingly rejected with liberty to pursue independently remedy if available in law.

[SANDEEP V. MARNE, J.] **[CHIEF JUSTICE]**