

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4730 OF 2024

**JYOTI
PRAKASH
PAWAR**

Digitally signed
by JYOTI
PRAKASH PAWAR
Date: 2025.06.12
10:43:32 +0530

G-Tech Construction and Fabricators
Represented through its Managing Partner
Kundan Jha

... Petitioner

V/s.

Union of India through Department of
Atomic Energy (DAE)

... Respondent

Mr. Amrendra Sinha for the Petitioner
Mr. Ajinkya Jaibhave for Respondent Nos. 1 to 3
Mr. S.S. Bedekar with Mr. Swapnil Shanbhag i/b. Hrishikesh Nabar for
Respondent No.5

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

DATE : 11 JUNE 2025

Order (Per Chief Justice) :

1. With consent of learned Counsel for the parties, the Petition is heard finally.

2. In this Writ Petition, the Petitioner, inter-alia, seeks quashment of communication dated 23 August 2024 issued by the Chief Engineer, Department of Atomic Energy, by which the Petitioner has been informed that its bid has been rejected on the ground that the Earnest Money Deposit (EMD) furnished by the Petitioner is not in proper format. The Petitioner has

also assailed the validity of action of Respondent Nos. 1 to 3 in awarding the contract in question to Respondent No.5.

3. Facts giving rise to filing of this Petition in nut shell are that the Petitioner is a partnership firm engaged in the business of construction and fabrication work. The Department of Atomic Energy, Government of India issued an E-Tender on 19 July 2024 for upgradation and development works for school for advance studies in nuclear science and technology at Anushakti Nagar, Mumbai. The Petitioner responded to the aforesaid notice inviting tender and furnished the EMD. An automated e-mail dated 23 August 2024 was sent by the Chief Engineer, Department of Atomic Energy, by which the Petitioner was informed that its bid for above tender is not admitted on the ground that the EMD has not been furnished in proper format.

4. Thereafter, an opportunity of hearing was afforded to the Petitioner on 16 August 2024 and the Petitioner was informed by an e-mail dated 9 April 2024 that EMD was not accepted as it was not signed and stamped by the Bank and did not have electronically generated certificate. The Petitioner, therefore, had filed this Writ Petition on 8 October 2024. The aforesaid Writ Petition preferred by the Petitioner was listed for admission for the first time before this Court on 3 February 2025.

5. After filing of the Writ Petition, the Department issued a work order in favour of Respondent No. 5 on 14 October 2024.

6. The learned Counsel for the Petitioner submitted that no format was prescribed for furnishing the EMD and therefore, the bid of the Petitioner could not have been rejected on the ground that the same was not in the prescribed format. Alternatively, it is contended that even if there was any discrepancy, the Respondents ought to have given an opportunity to the Petitioner to rectify the defect. On the other hand, the learned Counsel for the Respondents have submitted that the EMD of the Petitioner was not accepted as the same was neither signed nor stamped by the Bank and did not have electronically generated certificate. It is also urged that as on 11 June 2025, more than 75% of the work is complete and the 35% of the payment has already been disbursed to Respondent No.5.

7. We have considered the rival submissions made on both the sides and have perused the record.

8. Admittedly, under the requirement of furnishing EMD, Clause 4 of the notice inviting tender dated 19 July 2024 reads thus :-

“4. The tender document consisting of plans, specifications, the schedule of quantities of various types of items to be executed and the set of terms and conditions of the contract to be complied with and other necessary documents can be seen and downloaded from website CPPP sidte <https://eprocure.gov.in/eprocure/app> free of cost.

It is the responsibility of the tendered to submit the EMD (hard copy) duly, signed in a sealed envelope superscribed mentioning name of work and NIT number in the “Office of Head (QSA), 3rd Floor, DCSEM, North Wing, V.S.Bhavan, Anushaktinagar, Mumbai-400 094” on or before prescribed time and date of submission.

OBTAINING OF STANDARD DOCUMENTS: In addition to the above, the prospective agencies shall be required to possess following documents with the separately, which shall form part of Tender Documents for this work. These documents can be downloaded from the DCSEM’s website www.dcsem.gov.in or can be purchased separately on payment of prices indicated. In case the agencies already possess these standard documents with them, the same need not be downloaded/purchased again.

Printed books are available at the “Office of the HEAD (QSA), 3rd Floor,, DCSEM, North Wing, V.S. Bhavan, Anushaktinagar, Mumbai – 400 094. Payment for the same can be made in cash or in the form of DD drawn in favour of “Pay and Accounts Officer, DCSEM” payable at Mumbai as indicated below :

1	Conditions and Clauses of Contract (CCC) – 2008	Rs.50/-per book
2	Specifications for Civil Works – 2023	Rs.500/- per book
3	Specifications for PHE Works – 2023	Rs.300/- per book
4	Specifications for Electrical Works – 2024	Rs.400/- per book
5	Specifications for Mechanical Works – 2024	Rs.400/- per book

9. Thus, under Clause 4 it was the responsibility of the tenderer to submit EMD duly signed in a sealed envelope superscribed mentioning name of the work and NIT number. In the instant case, the Petitioner submitted the Fixed Deposit Receipts on 21 August 2024 which were neither signed nor had the stamp from the ICICI Bank. On the FDR it is also not mentioned that it is an electronically generated certificate. Therefore, the Department, by a

communication dated 23 August 2024 rightly informed the Petitioner that its bid has not been accepted. The action of the Respondents cannot be termed as arbitrary or irrational. It is in consonance with the terms and conditions of the NIT. Moreover, this Court in exercise of powers of judicial review cannot act as a Court of Appeal. The order rejecting the EMD and consequently, the technical bid of the Petitioner does not suffer from any infirmity warranting interference of this Court in exercise of writ jurisdiction. Even otherwise, it is worth mentioning at this stage that 75% of the work is complete and 35% of the payment has already been disbursed in favour of Respondent No.5.

10. For the aforesaid reasons, no case for interference in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India is made out.

11. In the result, the Writ Petition fails and is hereby dismissed.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)