



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

**WRIT PETITION NO.1779 OF 2025
WITH
INTERIM APPLICATION NO.1380 OF 2025
IN
WRIT PETITION NO.1779 OF 2025**

Monarch Surveyors & Engineering
Consultants Limited

...Petitioner

V/s.

Union of India and Ors.

...Respondents

Ms. Shilpi Jain *with Ms. Rashmi Shah, Ms. Sayli Shinde and Ms. Garishma Mody i/b. M/s. Kartikeya & Associates for the Petitioner.*

Mr. Narayan R. Bubna *for Respondent Nos.1 & 2.*

Ms. Nisha Kaba *(through VC) with Mr. Preetham Kunapareddy, Mr. Surya Tej PNJ, Ms. Anusha Moturi, Ms. Shreekriti Taggarse, Mr. Abhijit Singh and Ms. Mallika Kerketta for Respondent No.3.*

CORAM: ALOK ARADHE, CJ. &

SANDEEP V. MARNE, J.

Dated: 8 JULY 2025.

Oral Order (Per: Chief Justice)

- 1) With consent of the parties, Petition is heard finally.

2) In this Writ Petition the Petitioner *inter alia* seeks to quash and set aside order dated 7 November 2024 issued by Central Railways, Government of India (**Central Railways**) in favour of Respondent No.3-M/s. Aarvee Associates Architects Engineers and Consultants Private Limited, Hyderabad, by which a Letter of Acceptance in respect of contract in question has been issued in its favour. Petitioner also seeks a direction to Respondent Nos.1 and 2 to cancel the impugned letter dated 7 November 2024 and to direct Respondent Nos.1 and 2 to call the Petitioner and the successful bidder for further negotiations.

3) In order to appreciate the grievance of the Petitioner, brief facts are that:-

Central Railways published a tender for carrying out feasibility studies, preparation of DPRs, preparation of EPC tender document and tunnel designing for various identified groups to be handled by the Central Railways. As per the bid document, the last date of submission was 6 September 2024. The work under the said tender was required to be completed within a period of 24 months from the date of Letter of Acceptance. Petitioner as well as Respondent No.3 submitted response to the aforesaid tender submitting their bids. Petitioner vide an email dated 28 October 2024 was apprised that its bid has been found technically suitable and that financial bid would be opened on the same day i.e. 28 October 2024. On opening of the financial bid it was found that Petitioner and Respondent No.3 had quoted

the same amount i.e.Rs. 57,01,74,914.58, which was 6% below price quoted by Respondents in e-document of the said tender. Central Railways thereupon by taking into account the policy circular dated 18 February 2018 issued by Government of India, Ministry of Railways, Railway Board (**Railway Board**) decided to award the tender bid to Respondent No.3 on the ground that it had higher bid capacity than the Petitioner. It is not in dispute that Petitioner's bid capacity is Rs.217.89 crores whereas bid capacity of Respondent No.3 is Rs.756.57 crores. Accordingly, Letter of Intent was issued in favour of Respondent No.3. Hence, this Petition.

4) The learned counsel appearing for the Petitioner has submitted that when the tenders are invited, terms and conditions must indicate with certainty of norms and benchmarks. In support of aforesaid submission, reliance is placed on judgment of the Hon'ble Supreme Court in ***Reliance Energy Ltd. and another V/s. Maharashtra State Road Development Corporation Ltd. and others***¹. It is contended that the policy circular dated 18 December 2018 was not a part of the e-tender and the e-tender does not make a reference to the said policy. It is further submitted that in the peculiar facts and circumstances of the case, the Central Railways ought to have invited the Petitioner and Respondent No.1 to participate in the negotiations in view of the decision of the Supreme Court in

¹ (2007) 8 SCC 1

***Ram and Shyam Company V/s. State of Haryana and Ors.*²**

It is also contended that rules of the game cannot be changed once the process of the tender is commenced. In support of aforesaid submission, reference is made to decision of the Hon'ble Supreme Court in ***Monarch Infrastructure (P) Ltd. V/s. Commissioner, Ulhasnagar, Municipal Corporation and Others***³ and ***Tej Prakash Pathak and Ors. V/s. Rajasthan High Court and Ors.***⁴

5) On the other hand, the learned counsel appearing for Respondent No.1 has submitted that Respondent No.1 has adjudged the validity of Petitioner as well as Respondent No.3 on the basis of the guidelines issued by the Railway Board and therefore the action of Respondent No.1 cannot be found fault with.

6) We have considered the rival submissions made by both the parties and perused the records.

7) The scope of interference with tender conditions in exercise of powers of judicial review is well delineated by catena of decisions of Supreme Court. The discretion to grant largesse including contracts, quotas and license and so on must be structured by rationale, relevant and non- discretionary standard

² (1985) 3 SCC 267

³ (2000) 5 SCC 287

⁴ (2025) 2 SCC 1

or norms. (See : ***Narendrakumar Maheshwari Vs. Union of India***)⁵. It is well settled legal preposition that it is open to the State to impose conditions in the tender prescribing the eligibility criteria and if the State can justify the tender conditions in the context of a particular contract the Courts will not interfere and whenever there are different alternatives, it is not for the Courts to suggest that a particular alternative is justified. In celebrated case of ***Tata Cellular Vs. Union of India***⁶, it was held that terms of invitation to tender are not open to judicial scrutiny because invitation to tender is in the realm of contract. However, it has been held that decision taken by a body functioning in an administrative or quasi administrative sphere can be tested on the application of Wednesbury principle of reasonableness and has to be free from arbitrariness, not effectuated by bias or *mala fide*. In ***Director of Education & Ors. Vs. Educomp Datamatics Ltd. & Ors.***⁷ and in ***Global Energy Ltd. Vs. Adani Exports Ltd.***⁸ it was held that Courts cannot whittle down the terms of the tender, unless the same are shown to be wholly arbitrary, discriminatory or actuated by malice.

8) In the present case the bid amount of Petitioner as well as Respondent No.3 was equal. The Central Railways thereupon relied on the circular dated 18 February 2018 issued by the Railway Board, which applied uniformly to all affairs of

⁵ 1990 (Supp) SCC 440)

⁶ 1994(6) SCC 651

⁷ 2004(4) SCC 19

⁸ 2005(4) SCC 435

work contracts across all zones /divisions. Clause 6.0 of the aforesaid circular provides that in case of more than L-1 bidders, tender may be awarded to tenderer having higher bid capacity. Admittedly, Respondent No.3 has higher bid capacity than that of the Petitioner. Therefore, Central Railways took a decision to award the contract to Respondent No.3. The eligibility and evaluation of the financial bids of the Petitioner have been made on the basis of the policy circular dated 18 February 2018 and decision has been taken to award work to Respondent No.3 in view of the mandate contained in Clause 6.0 of the aforesaid policy circular. The action of the Central Railways therefore by no stretch of imagination can either be termed as arbitrary or irrational. The tendering authority has not altered the rules of the game after the game commenced. There was no necessity of inviting the bidders for re-negotiations. Therefore, reliance by the learned counsel for Petitioner on the cited judgments is inapposite.

9) It is not the case of the Petitioner that action of Respondent No.1 is effectuated by bias or *mala fide*. For the aforementioned reasons we do not find any ground to interfere in the impugned decision taken by Respondent No.1. In the result, the Writ Petition is **dismissed**.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]