



2210-2025

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2210 OF 2025

(M/s Aditya Construction Company, through its authorized signatory Mr. Nilesh s/o Rameshwarrao Borekar Vs. Vidharbha Irrigation Development Corporation, through its Executive Director & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.R. Chhabra with Mr. S.N. Tapadia, Counsel for the petitioner.

Ms A.S. Athalye, Counsel for respondent nos. 1 to 4.

Mr. A.C. Dharmadhikari, Counsel for respondent no.5.

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**CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.**

ARGUMENTS WERE HEARD ON : NOVEMBER 27, 2025

ORDER IS PRONOUNCED ON : DECEMBER 1, 2025

Respondent no.4 – Executive Engineer,
Vidarbha Irrigation Development Corporation, floated
tender for repairing and renovation of Main Earthen Wall,
Overflow Section and Other Ancillary Components of
Januna Dam, Taluka – Khamgaon, District – Buldhana.
The petitioner submitted its bid for the said tender.

2] To qualify for award of the contract, a
bidder was required to fulfill eligibility criteria as stated
in Clause 3.3 of Section 3 of the tender document. Clause
3.3.2 of the tender document requires bidder to have
experience in similar type of work. The said Clause reads
as under :

“3.3.2 Experience in Similar Type of Work :

Minimum Requirement for Contractors :

Contractors are required to have successfully
completed a work, as per the Definition of the
work, under a single contract. The cost of this
work should not be less than Rs.526.47 Lakh,

considering the price level of the financial year 2024-25.”

3] The technical bids were evaluated, and the petitioner was disqualified on the ground that it had not carried out similar type of work and does not satisfy Clause 3.3.2. According to the petitioner, the decision of disqualification is arbitrary. Hence, the present petition.

4] We have heard Mr. R.R. Chhabra with Mr. S.N. Tapadia, learned Counsel for the petitioner, Ms A.S. Athalye, learned Counsel for respondent nos. 1 to 4, and Mr. A.C. Dharmadhikari, learned Counsel for respondent no.5.

5] The issue involved revolves around the Work Completion Certificate furnished by the bidders. The Work Completion Certificate, submitted by the petitioner, is at page 458, and that of respondent no.5, whose tender is accepted, is at page 550 of the petition.

6] The respondents argument is that the document so furnished by the petitioner did not qualify Clause 3.3.2. According to the respondents, the document is not sufficient to establish that similar work has been successfully completed by the petitioner.

7] Our attention is invited to following information : Clause 8 refers to ‘Schedule date of completion’, against which, scheduled date is not mentioned, but ‘Work Successfully Completed’ is mentioned. In Clause 10, final date of completion is shown as ‘30/06/2023’.

8] The respondents Counsel has, then, invited our attention to Work Done Certificate annexed with the said document (page 460 of the petition). It is issued by the concerned Executive Engineer. The certificate is issued on 4/10/2023, i.e., after about three months of the date of alleged completion of work. The last line of the Work Done Certificate reads as follows : “At present Earthen Dam is physically completed and agreement work is 93.89% completed.”

9] The Counsel for the respondents submits that the documents furnished by the petitioner if are read collectively, what is apparent is that the scheduled date of completion is not given, the final date of completion is said to be 30/6/2023, and on 4/10/2023, the Executive Engineer concerned issued a certificate saying that work completed is 93-89%. In addition to above, final bill is also not paid. Such status of work cannot be treated as successful completion of work. Accordingly, respondent no.4 has rejected the petitioner’s bid.

10] The petitioner has criticized this rejection saying that it is an arbitrary act. According to the petitioner, under Clause 8, though scheduled date of completion is not mentioned, the Executive Engineer has categorically mentioned that work is successfully completed. This itself, according to the petitioner, is a sufficient proof of completion of similar type of work. So far as certificate dated 4/10/2023 is concerned, the Counsel for the petitioner submits that reference to 93.89% is in context with the amount of bill paid to the petitioner. He submits that the said percentage of

completion of work pertains to the amount paid to the petitioner, and not about completion of work.

11] The Counsel for the petitioner has, then, invited our attention to the Work Completion Certificate issued to respondent no.5. Clause 13 pertains to 'Balance amount of work', against it, an amount of Rs.5.27 lakh is mentioned, and in addition, following information is given : "Overall dam construction work is physically 100% completed." The Counsel submits that the certificate issued to respondent no.5 does not even show that work has been successfully completed. What is mentioned in the certificate is that the construction of dam is physically 100% completed. He submits that if such a certificate, which also indicates amount of Rs.5.27 lakh remaining, is accepted, the petitioner's certificate is better placed.

12] We do not find any merit in the submissions made by the petitioner. Firstly, there appears no reason why should, in the certificate issued to the petitioner, under Clause 'Schedule date of completion', one should mention 'Work successfully completed' instead of giving the completion date. Secondly, if the final date of completion was 30/6/2023, the certificate issued on 4/10/2023 should not have indicated that the agreement work is 93.89% completed. As such, the certificate also mentions that the Earthen Dam is physically completed. However, additional information that as per agreement it is 93.89% complete would leave doubt, and in that context, interpretation of tender conditions by respondent no.4 – employer will have to be honored. One cannot

expect respondent no.4 to understand that 93.89% refers to financial completion and not actual completion of work, particularly when final bill is not paid.

13] So far as the certificate issued to respondent no.5 is concerned, an amount of Rs.5.27 lakh, as mentioned in Clause 13, is in respect of the amount remaining after completion of work. Clause 13 is sum total of revised amount of work minus cost of work executed. The revised amount of work, as shown in Clause 11, is Rs.1652.59 lakh and the cost of work executed is Rs.1642.32 lakh, and accordingly, the balance amount of work is shown as Rs.5.27 lakh. This amount cannot be said to be an amount of balance work, but is an amount remaining after completion of work. What is important here is the other information provided against Clause 13, where, the concerned Executive Engineer has mentioned that the dam construction work is physically 100% completed and final bill paid. This, according to respondent no.4, would meet the eligibility criteria. Such interpretation would also find favor with respondent no.4, who is best person to appreciate and understand its requirement. It is well settled that in tender matters, it should be left to the employer to interpret the Clauses of tender. The interference by the Court is permissible, where the interpretation is apparently illogical, arbitrary or suffers from *mala fide*.

14] In the present case, *mala fide* is not attributed to the respondents. Further, the petitioner is not the only other bidder, four others have also submitted bids. They have no grievance. The petitioner has come up

with a case of arbitrary decision, which, according to us, is not finding any support from the documents.

15] The Counsel for the petitioner has relied upon the judgment in the case of i] *Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Others* [2024 SCC OnLine SC 1682]; ii] *Maha Mineral Mining & Benefication Pvt. Ltd. Vs. Madhya Pradesh Power Generating Co. Ltd. and Another* [2025 SCC OnLine SC 1942]; iii] *Kimberley Club Pvt. Ltd. Vs. Krishi Utpadan Mandi Parishad and Others* [2025 SCC OnLine SC 2323]; iv] *Mohinder Singh Gill And Another Vs. The Chief Election Commissioner, New Delhi And Others* [(1978) 1 SCC 405]; and v] *United Air Travel Services Through Its Proprietor A.D.M. Anwar Khan Vs. Union of India Through Secretary (Ministry of External Affairs)*, to contend that cancellation of tender by a public authority must be based on genuine and *bona fide* reason that are properly reflected in the decision making process. That a bidder's reliance on work execution certificate, which explicitly states the bidder's experience and share within a consortium, can be considered sufficient to establish eligibility and experience under tender process. That the terms of NIT must be clear and unambiguous regarding requirement for submission of such certificate. In the case before the Hon'ble Supreme Court, the notice inviting tender did not specify the authority, who should issue solvency certificate and, therefore, rejection of bid was diverse the terms of NIT and, therefore, unjustified. That in administrative law, the action is to be judged by reason stated while making order, and supplementary reasons in

the shape of affidavit should be executed. This finding, however, has been rendered in the petition, where the Supreme Court was required to consider scope of Election Commission's power under Article 324 of the Constitution of India. That the administrative actions must be grounded in reasons explicitly communicated at the time of decision. These findings were rendered in a case, where private tour operators were disqualified from obtaining registration for organizing pilgrimage tour. The authorities were discharging statutory duties, and accordingly, the Supreme Court underscored importance of transparency, consistency and adherence to procedural fairness when public authorities exercised statutory powers, especially in matters affecting citizens lives and livelihood.

16] Here, we may refer to the judgment of the Supreme Court in the case of *National Highways Vs. Madhukar* [2021 SCC OnLine SC 791], where, in the case of construction of toll plaza, on the point of reasons to be assigned while taking decision, the Court referred to various judgments, and held that it is one thing to say that there should be reasons, which persuaded Administrator to take a particular decision and a different thing to find that the reasons must be incorporated in a decision. The Court held that it would depend on the nature of duty and the issue involved whether or not the reasons should be part of the order. Accordingly, the Court held that in certain situations, reasons will have to be recorded in the order, and in another, it may be found in the files. The Court, then, held that when there is no duty

to record reasons, the administrative decision may be supported through pleadings aided by material. Thus, the moot question is whether absence of reason in taking decision in the present case, will vitiate the decision. The answer is certainly in the negative for following reasons.

17] The petitioner has not pointed out to us any material that would indicate that respondent no.4 was under an obligation to communicate detail reasons while rejecting the bid. That being so, and considering the flaws in the documents submitted by the petitioner, we do not find that the decision taken by respondent no.4 is incorrect much less an arbitrary decision. The decision arises out of documents furnished by the petitioner. The documents itself are inconclusive of completion of work. The decision is nothing but reading of documents submitted by the petitioner. The respondent no.4 found these documents to be not sufficient to show that the petitioner has completed the work. Accordingly, he found that the petitioner was not meeting the eligibility criteria, and rejected the bid. In such circumstances, where respondent no.4 was not duty bound to convey decision with reasons, he may justify decision by assigning reasons through pleadings.

19] On the point of interpretation of tender condition and the scope to interfere in tender matters, the respondents have relied upon following judgments :

I] *Agmatel India Private Limited Vs. ResourSYS Telecom And Others [(2022) 5 SCC 362]*.

II] *N.G. Projects Limited Vs. Vinod Kumar Jain And Others [(2022) 6 SCC 127]*.

III] *Silppi Constructions Contractors Vs. Union of India And Another [(2020) 16 SCC 489]*.

IV] *Tata Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others [2023 SCC OnLine SC 671]*.

V] *Consortium of Titagarh Firema Adher S.P.A. - Titagarh Wagons Ltd. Through Authorised Signatory Vs. Nagpur Metro Rail Corporation Limited (NMRCL) Through its General Manager (Procurement) And Another [(2017) 7 SCC 486]*.

20] The law laid down can be summarized as follows :

The author of tender document is the best person to understand and appreciate its requirement. The Writ Court should not substitute its preferred interpretation of tender condition with the one adopted by the author of the tender document. The satisfaction whether the bidder satisfies the tender condition is primarily upon the authority inviting bids. While rejecting tender, the authority inviting tenders is not required to give reasons, even if it is to be State within the meaning of Article 12 of the Constitution of India. It should be borne in mind that evaluation of tenders are essentially a commercial function and principle of equity and natural justice stay at a distance. Where the decision is taken that is manifestly in consonance with any of the tender document or sub-surge the purpose, for which the tender

is floated, the Court should follow the principle of restraint.

21] The law laid down in the aforesaid judgments would support the decision taken by respondent no.4, which, even otherwise appears to us to be a possible view. In any case, one cannot label the decision as arbitrary.

22] The petition, therefore, is devoid of merit, and is accordingly dismissed.

(JUDGE)

(JUDGE)

LATER ON

23] The Counsel for the petitioner submits that the statement made by respondent no.1 on 23/4/2025 that work order will not be issue till next date should be continued.

24] The Counsel appearing for respondent no.1 submits that respondent no.1 is not willing to make/continue the statement.

25] In the circumstances, the request made by the petitioner cannot be acceded to. The same is accordingly rejected.

(JUDGE)

(JUDGE)

Sumit