2025:BHC-NAG:9270-DB

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

WRIT PETITION No. 3969 OF 2025

M/s. Sadgurukrupa Construction and P.K. Jadhao (J.V.), having its office at 53, Gajanan Colony, Daryapur, Dist.Amravati through its Authorised Partner Shri Arun Chondke

.... **PETITIONER.**

// **VERSUS** //

1. State of Maharashtra, through its Principal Secretary, Public Works Department, Mantralaya, Mumbai -32.

2. Chief Engineer, Public Works Region, Public Works Department, Amravati.

3. Superintendent Engineer, Public Works Circle, Public Works Department, Amravati.

4. Executive Engineer, Special Project, (P.W.), Division No.2, Daryapur, District : Amravati.

5. M/s. Oberoi Constructions, having office behind Krushnarpan Apartment, Near Jalaram High School, Maratha Nagar, Akola – 444 005, through its Proprietor Shri Ranjitsingh Oberoi.

6. Yashpal Dayaram Sharma, a Proprietary Concern, having office at C/o. Shriram Saw Mill, Borgaon Manju, Dist. Akola-444102, through its Proprietor Shri Y.D. Sharma.

.... **RESPONDENTS.**

Shri S.P.Dharmadhikari, Sr. Advocate a/b Shri Chinmay Dharmadhikari, a/w Shri Gaurang Bhake & Shri Raghav Bhandakkar, Advocates for Petitioner.
Shri D. V. Chauhan, Sr. Advocate & G.P. a/b. Shri H.D.Marathe, AGP & Shri Aditya Chaudhari, Advocate for Respondent/State.
Shri A.C.Dharmadhikari, Advocate for Respondent No.5.

CORAM :ANIL S. KILOR AND VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE ORDER : 11/08/2025
DATE OF PRONOUNCING THE JUDGMENT : 17/09/2025

JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard.

2. **RULE**. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. In the present writ petition the petitioner is praying for quashing and setting aside rejection of its technical bid for the work of improvement of Umri-Wadalgavan-Kokarda-Hayapur Road M.D.R. 14 Km 1/750 to 16/00, District : Amravati.

The brief facts of the present case are as follows :

4. The petitioner is a Joint Venture (J.V.) between M/s. Sadgurukrupa Construction and M/s. P.K. Jadhao Construction Company, which is a lead partner of the J.V.

5. The respondent No.4 for the purpose of improvement of Umri-Wadalgavan-Kokarda-Hayapur Road M.D.R. 14 Km 1/750 to 16/00, District : Amravati published a tender on the E-tendering portal maintained by the respondent No.1 inviting tenders for the above referred work.

6. Since the petitioner was interested in participating in the said tender process, the petitioner submitted the tender on 30/06/2025.

7. On 03/07/2025 the respondent No.4 opened the technical bid of the petitioner along with other competent bidders.

8. It is submitted that on 08/07/2025 the respondent No.4 uploaded on the e-procurement portal certain purported shortcomings in the technical bid of the bidders, including the petitioner. In reply, the petitioner informed the respondent No.4 that the petitioner has already complied with all the clauses of the tender document and the documents pertaining to each of the requirements have already submitted along with its bid document.

9. Thereafter, the petitioner received E-mail on 18/07/20215, informing that the financial bids for the subject will be opened on 21/07/2025 at 01:00 p.m. in the office of the respondent No.3 and the petitioner should remain present for the same. Accordingly, the petitioner went to the office of the respondent No.3 on 21/07/2025 where the respondent No.4, for the first time, according to the petitioner, raised issue related to the distance of Hot-Mix Plant from the site and verbally stated that the Hot Mix Plant of the petitioner is situated more than 25 Kms away from the farthest point of the work site and therefore, they cannot be exempted from payment of Assured Performance Security under clause 4.4 B of the tender document.

10. The petitioner immediately submitted a letter stating that the Hot Mix Plant of the petitioner is well within 25 Kms. from the farthest point of the work site. The petitioner also submitted screen shots from Google maps and a handmade map showing the distance of the Hot Mix Plant from the farthest point of the work site.

11. On 21/07/2025 it was also informed by the petitioner to the respondent No.4 that as per the Government Resolution dated 17/07/2019 if any objection is being raised by any bidder in relation to

the tender process where the tender amount is more than 15 crores, the said objection shall be referred to the respondent No.1 for decision. He, therefore, requested to refer his complaint to the respondent No.1.

12. On 24/07/2025 the respondent No.4 rejected the technical bid of the petitioner and declared that respondent Nos.5 and 6 are technically qualified and on the same day opened the financial bid of the respondent Nos. 5 and 6 and declared the respondent No.5 as lowest bidder. The tender summary report dated 24/07/2025 and Summary Details Report disclose that the petitioner has not made compliance of Clauses 4.4 B(2) and (3) with Note and Clause 4.3(2). Thus, rejection of the technical bid of the petitioner is under challenge.

13. We have heard the learned counsel for both the parties.

14. Shri Dharmadhikari, learned Senior Advocate argued that while it is a matter of record that payment of the EMD amount was made by the petitioner through its other partner and not its lead partner, Respondent No. 4 ought to have appreciated that Clause 4.3 (2) of the tender document which permits payment of the EMD amount by the lead partner on behalf of the Bidder Joint Venture, by no stretch of imagination can be termed as an essential condition, required for

evaluating the technical and operational capacity of the bidder, but it is an ancillary or subsidiary condition. Therefore, the tendering authority should not have rejected the technical bid of the petitioner on such a hyper technical ground.

15. The learned Senior Advocate further argued that Respondent No.4 for the very first time raised the issue of non-compliance of Clause 4.4 B (2) and (3) with Note despite the fact that the Hot Mix Plant of the Petitioner is well within 25 Km from the farthest point of the work site. Therefore, Respondent No.4 ought to at least have conducted a joint measurement to verify the same and then should have come to a definite conclusion. However, without verifying the details given by Petitioner as to distance of the Hot Mix Plant from the farthest point at the work site, and without independently verifying the same, straight away came to a conclusion that the Petitioner failed to comply with Clause 4.4.b (2) and (3) with Note.

16. It is argued that even if the requirements of Clause 4.4.b (2) and (3) with Note and Clause 4.3 (2) are considered as essential conditions and it is assumed that the petitioner has not complied with them, respondent No. 4 ought to have appreciated that the same are at

most rectifiable defects and ought to have insisted upon strict compliance of the said conditions and granted to the petitioner a period of 10 days as per Clause 23.4 (ii) of the tender document to rectify the same.

21. It is argued that as per the Government Resolution dated 17/09/2019, complaints made by a bidder pertaining to opening of bids in a tender with a value of more than Rs.15 Crores, shall be exclusively enquired into by Deputy Secretary, Public Works Department and a decision thereon shall be taken exclusively by the Additional Principal Secretary, Public Works Department. It is submitted that the Petitioner had made written representation to Respondent No.4 regarding non-compliance of requisite qualification criteria by Respondent No. 5 and 6. However, Respondent No.4 instead of complying with Government Resolution dated 17/09/2019 and referring the said complaint to Additional Principal Secretary, Public Works Department and decided to mechanically dismiss the same by himself. It is submitted that such action on part of respondent No.4 raises serious doubt over the transparency and legality of the tender process.

22. It is argued that the tendering authority failed to take in to consideration that as per Government Resolution dated 12/04/2017,

under which the subject tender process is initiated, specifically as per Clause 4.4 thereof, if only 2 bidders are technically qualified in the first round of tender, then the tender process must be cancelled and floated afresh. The Petitioner submits that the tendering authority should not have proceeded with the opening of financial bid after the technical bid of the Petitioner was arbitrarily rejected and only two bidders were declared technically qualified.

17. To substantiate his arguments the learned Senior Advocate relied on the following pronouncements of the Hon'ble Supreme Court of India :

(i) *Poddar Steel Corpn. ..vs.. Ganesh Engineering Works*, reported in **(1991) 3 SCC 273**;

(ii) *Rashmi Metaliks Ltd...vs..Kolkata Metropolitan Development Authority*, reported in **(2013) 10 SCC 95.**

18. On the contrary, Shri Devendra Chauhan, learned Senior Advocate and Government Pleader argued that the judicial interference in the decision-making process of the Tendering Authority is available only when the petitioner makes out a case of absolute arbitrariness, unreasonableness or stands to violate Wednesbury principle. None of these grounds are made out much less pleaded. Absent is even a pleading, that the decision-making process is in violation of any of the legal right or

a fundamental right of the petitioner much less ground of violation of Article 14 of the Constitution of India.

19. The petitioner appears to be aggrieved because of rejection of its technical bid by the Tendering Authority as claimed for the violation of Clause 4.3(2), Clause 4.4(b)2 and 3 of the tender documents, which are absolutely essential.

20. The tender documents deserve to be interpreted in the background of the requirements of the Tendering Authority. If the Tendering Authority has given a particular interpretation to the tender document, judicial interference stands ruled out is the position of law as it stands today. If the case in hand is tested in the background of these judicial principles, it would be more than apparent that the interpretation put by the Tendering Authority answering respondents to the requirement of tender cannot be held to be in contradiction to the nexus of the tender. The process and object of the tender and the conditions framed therein will have to be, therefore, holistically interpreted to test the decision-making process.

21. The tender was floated for improvement of Umri-Wadalgavan-Kokarda-Hayapur Road, which is a Major District Road No.14 in Amravati District.

22. The petitioner, if had any doubt whether the Tendering Authority would have permitted submissions of EMD by any of the members and not by the lead partner could have been clarified when the stage was set in the form of pre-bid meeting. The petitioner, therefore, now cannot raise a grievance that Tendering Authority was not justified in insisting that the EMD ought to have been submitted only by the lead partner.

23. The other reason why the Tendering Authority had not accepted the bid of the petitioner is because there was non-compliance to Clause 4.4.b. The reading of the clause would show that the said clause required availability of certain equipments and machineries.

24. The learned Government Pleader argued that the Tendering Authority of having treated the petitioner in the most transparent and fair manner. The Tendering Authority made every effort at the petitioner's request to recalculate the distance and the same was also done in the presence of petitioner's representative. It is, therefore, not that the

Tendering Authority was acting against the petitioner's interest or to support the cause of any other bidders.

25. In support of his arguments the learned Government Pleader placed reliance on the following judgments of the Hon’ble Supreme Court of India :

(i) *G.J.Fernandez ..vs.. State of Karnataka*, reported in **(1990) 2 SCC 488**;

(ii) *Bharat Coking Coal Ltd...vs..Amar Dev Prabha*, reported in **(2020) 16 SCC 759**;

26. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of the Hon’ble Supreme Court of India. The Hon’ble Supreme Court of India has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

27. The Hon'ble Supreme Court of India in the case of *Bharat Coking Coal Ltd.* (supra) has observed thus :

> *"28. The scope of judicial review in tenders has been explored in-depth in a catena of cases. It is settled that constitutional courts are concerned only with lawfulness of a decision, and not its soundness." Phrased differently. the courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills. This is especially true given our unique domestic circumstances, which have demonstrated the need for judicial intervention numerous times. Hence, it would only be the decision-making process which would be the subject of judicial enquiry, and not the end result (save as may be necessary to guide determination of the former).*
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> *29. This position of law has been succinctly summed up in Tata Cellular v. Union of India, where it was famously opined that: (SCC pp. 677-78, para 77)*
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> *"77. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*
> *(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
> *(ii) Irrationality, namely, Wednesbury unreasonableness.*
> *(iii) Procedural impropriety."*
> *30. ...*
> *31. In cases where a constitutional right is infringed, writs would ordinarily be the appropriate remedy. In tender matters, such can be either when a party seeks to hold the State to its duty of treating all persons equally or prohibit it from acting arbitrarily;*

or when executive actions or legislative instruments are challenged for being in contravention to the freedom of carrying on trade and commerce. However, writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty. Hence, the persons seeking writ relief must also actively satisfy the Court that the right it is seeking is one in public law, and not merely contractual. In doing so, a balance is maintained between the need for commercial freedom and the very real possibility of collusion, illegality and squandering of public resources.

32. Such a proposition has been noticed by this Court even earlier in Jagdish Mandal v. State of Orissa in the following words: (SCC p. 531. para 22)

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years or delay relief and succour to thousands and millions and may increase the project cost manifold." (emphasis supplied)

33. ...

34. It is thus imperative that in addition to arbitrariness, illegality or discrimination under Article 14 or encroachment of *freedom under Article 19(1)(g), public interest too is demonstrated before remedy is sought. Although the threshold for the latter need not be high, but it is nevertheless essential to prevent bypassing of civil courts and use of constitutional avenues for enforcement of contractual obligations.*

** * **

38. … There are various factors in play, in addition to mere bidding price, like technical ability and timely completion which must be kept in mind. And adopting such interpretation would permanently blur the line between contractual disputes involving the State and those affecting public law. This has aptly been highlighted in Raunag International Ltd. v. I.V.R. Construction Ltd. : (SCC p. 501. para 11)

"11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers." (emphasis supplied)

39. … However, being declared the L-1 bidder does not bestow upon any entity a public law entitlement to award of the contract, as noted in Maa Binda Express Carrier v. North-East Frontier Railway: (SCC pp. 764-65, para 8)

"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its

> *agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process."* (emphasis supplied)

28. The Hon'ble Supreme Court of India in the case of *G.J. Fernandez* (supra) reported in **(1990) 2 SCC 488,** has observed thus :

> *"15. …. Assuming for purposes of argument that there has been a slight deviation from the terms of the NIT, it has not deprived the appellant of its right to be considered for the contract; on the other hand, its tender has received due and full consideration. If, save for the delay in filing one of the relevant documents, MCC is also found to be qualified to tender for the contract, no injustice can be said to have been done to the appellant by the consideration of its tender side by side with that of the MCC and in the KPC going in for a choice of the better on the merits. The appellant had no doubt also urged that the MCC had no experience in this line of work and that the appellant was much better qualified for the contract. The comparative merits of the appellant vis-a-vis MCC are, however, a matter for the KPC (counselled by the TCE) to decide and not for the courts. We were, therefore, rightly not called upon to go into this question."*

29. The Hon'ble Supreme Court of India in the case of *Poddar Steel Corporation* (supra) has observed thus :

> *"6. \It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in C.J. Fernandez v. State of Karnataka a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs."*

30. The Hon'ble Supreme Court of India in the case of *Rashmi Metaliks Limited* (supra) has observed thus :

> *"17. So far as Clause (j) of the detailed notice inviting E-tender No.01/KMDA/MAT/CE/2013-2014 dated 10-5-2013 emanating from the office of the Chief Engineer is concerned, it seems to us that contrary to the conclusion in the impugned judgment, the clause is not an essential element or ingredient or concomitant of the subject NIT. In the course of hearing, the income tax return has been filed by the appellant Company and scrutinised by us. For Assessment Year 2011-2012, the gross income of the appellant Company was Rs.15,34,05,627, although, for the succeeding Assessment Year 2012-2013, the income tax was nil, but substantial tax had been deposited.*
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> *18. We think that the income tax return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income on which tax was attracted. In many cases this is a salutary stipulation, since it is indicative of the commercial standing and reliability of the tendering entity. This feature being absent, we think that the filing of the latest income tax return was a collateral term, and accordingly the Tendering Authority ought to have brought this discrepancy to the notice of the appellant Company and if even thereafter no rectification had been carried out, the position may have been appreciably different. It has been asserted on behalf of the appellant Company, and not denied by the learned counsel for the respondent Authority, that the financial bid of the appellant Company is substantially lower than that of the others, and, therefore, pecuniarily preferable.*
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> *19. In this analysis, we find that the appeal is well founded and is allowed. The impugned judgment is accordingly set aside. The disqualification of the appellant Company on the ground of it having failed to submit its latest income tax return along with its bid is not sufficient reason for disregarding its offer/bid. The respondents are directed, therefore, to proceed further in the matter on this predication. The parties shall bear their respective costs."*

31. Having considered the scope of the judicial review in tenders, we revert back to the facts of the present case.

32. The technical bid of the petitioner was rejected for non-compliance of Clause 4.4 B (2) and (3) with Note and Clause 4.3 (2).

33. Clause 4.3 permitted participation by Joint Venture and sub-clause (2) contemplates that submission of Earnest Money or Additional Performance Security ought to have submitted in individual capacity only of the lead partner in case it is Joint Venture.

34. Admittedly, in the present matter, it was not submitted by the lead partner, but by the another partner.

35. It is the case of the respondent-tendering authority that stipulation of such condition is to test the credibility and stability of the lead partner of the Joint Venture. The Joint Venture Agreement provides for proportion of the percentage of the Joint Venture. The Joint Venture Agreement of the petitioner specifically stipulates that M/s. P.K. Jadhao Construction Company would be treated as lead partner.

36. The condition in tender document is specific and if the purpose for stipulating such condition is to test stability and credibility of the lead partner of the JV, it cannot be said that such condition is not the essential condition.

37. It is not the case of the petitioner that the petitioner was not aware of this requirement. It is always whose financial capacity is better is treated as a lead partner in the JV. Behind such condition it is the purpose of the tendering authority to test the credibility and stability of such lead partner. Thus, we do not find any error in treating such condition as essential condition by the respondent tendering Authority.

38. The another ground is non-compliance of Clause 4.4B which requires availability of certain equipments and machineries and most important amongst others was presence of Hot Mix Drum Mix Plant with a capacity of DM-60.

39. It is the requirement of the said clause that machinery from Sr.Nos. 1 to 9 should be owned by the bidder. Sub-clause (2) and sub-clause (3) of Clause 4 became relevant from which it is apparent that the basic requirement was that the Hot Mix Plant cannot be beyond 60 Kms.

while actual laying of Bituminous Hot Mix takes place. However, in case, the plant is between 25 kms and 60 kms then there was an additional requirement of a tenderer to submit the performance security of Rs.25,00,000/- in the form of FDR. In case, the Hot Mix Plant is not within 25 kms. from the farthest point of the work site, it is necessary for the petitioner to submit the FDR.

40. In the present matter, admittedly, it is the case of the petitioner that its Hot Mix Plant is within 25 kms. from the farthest point of the work site and therefore, the petitioner has not submitted the FDR.

41. According to the Tendering Authority every time when the distance was measured, it was found that the plant of the petitioner was beyond 25 kms. from the farthest point of the work site.

42. Thus, there are two versions i.e. the version of the petitioner that the plant is within 25 kms. from the farthest point of the work site, whereas, the second version is the Tendering Authority which denies the said fact.

43. The petitioner is relying upon the Google or Handmade sketch. Whereas, the Tendering Authority is relying upon the actual measurement carried out. Thus, a question of fact is involved.

44. It is the case of the petitioner that the authorities ought to have granted time of seven days to cure the discrepancy to submit the FDR in case it was noticed by the Tendering Authority that the plant of the petitioner is beyond 25 kms. from the farthest point of the work site.

45. No doubt, clause 6 of the Government Resolution dated 17/09/2019 speaks about such opportunity. However, as per the Tendering Authority the distances of the plants of all the bidders were measured and calculated at the request of the petitioner. It is pointed out that on 09/07/2025 the petitioner raised an objection to the distance of the Hot Mix Plant of the other bidders. Thereupon, the Sub-Divisional Engineer, Public Works Department Sub-Division, Anjangaon-Surji was asked to verify the distance of the Hot Mix Plant from the farthest point of the work site. Accordingly, survey was done and the report was submitted on 15/07/2025.

46. It is to be noted that the Sub-Divisional Engineer not only conducted the survey of other bidders but also he conducted the survey of the petitioner's plant and it was found that the Hot Mix Plant of the petitioner is at a distance of 28.400 km. from the farthest point of the work site.

47. It is to be further noted that on the date on which the financial bids were to be opened, the petitioner again raised an issue about the distance of the Hot Mix Plant vide communication dated 21/07/2025 insisting the authorities to reconsider the distance in case of the petitioner's Hot Mix Plant.

48. The Tendering Authority again directed the Sub-Divisional Engineer to recalculate the distance and according to the Tendering Authority the survey was conducted in presence of the representative of the petitioner one Mr. Prashant Chondke. The report submitted on 21/07/2025 would reveal that even after considering the alternate route, as suggested by the petitioner's representative, the distance was beyond 25 kms.

49. According to the petitioner, his representative was not present during the survey. Whereas, it is the case of the respondent / Tendering Authority that the representative was present but he refused to sign the report.

50. Thus, again on this point there is a disputed question of fact whether the survey was conducted in the presence of the representative of the petitioner or not.

51. The petitioner thereafter submitted Google map to demonstrate that the distance of his plant from the farthest point of the work site, is less than 25 kms. It is to be noted that despite the reports and having knowledge that the plant of the petitioner was found beyond 25 kms. from the farthest point of the work site and despite the Google map was filed by the petitioner, to support its claim about distance of Hot Mix Plant, at no point of time any attempt was made by the petitioner to make a request to the Tendering Authority to allow to submit FDR under protest.

52. The above referred facts speak for itself that the first survey was conducted at the behest of the petitioner and one of the surveys was

made in the presence of the representative of the petitioner, though denied by the petitioner.

53. In the circumstances, it cannot be said that sufficient opportunity was not available for the petitioner to submit FDR or to say that the respondent authority has not given opportunity to rectify the defects and submit the FDR.

54. The clause of having Hot Mix Plant at a distance stipulated is with an object that the Hot Mix Plant is the source of supplying the raw material for creation of the road, and therefore, for uninterpreted supply of the hot mix / bituminous mix, it is necessary to have the plant within the stipulated distance. Therefore, such a condition cannot be termed as non-essential condition or criteria.

55. As regards the argument made by the petitioner that since there were only two qualified bidders as per the Government Resolution dated 12/07/2018, the Tendering Authority shall go for re-tendering, cannot be accepted in view of the subsequent Government Resolution dated 27/09/2018, which clarifies the position that when subsequent to

scrutiny of technical bids, what the authority should do if faced with the situation of single bidder getting qualified. Thus, on this count also, we do not find any merit.

56. Having observed that the respondent Authority has rightly rejected the technical bid of the petitioner and considering the scope of the judicial review in the tender matters, we are not inclined to interfere with the tender process in the present matter.

57. Accordingly we pass the following order :

The Writ Petition is **dismissed**. No order as to costs.

(VRUSHALI V. JOSHI, J) (ANIL S. KILOR, J)

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