



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

WRIT PETITION NO. 4328/2025.

Gramin Yuvak Bahu-uddeshiya Prashikshit Berojgar Sewa Sahakari Sanstha Ltd.

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S. Deojuari, Advocate for the Petitioner.
Shri D.V. Chavhan, G.P./Senior Advocate with Shri
K.Lule, A.G.P. for Respondents.

CORAM : ANIL L PANSARE AND
M.M. NERLIKAR, JJ.

DATE : AUGUST 08, 2025.

Heard.

2. The challenge in this petition is to the eligibility criteria described as 'Condition No.4' for the bidders to be eligible to submit their bid. The condition reads as under :

"4. The bidder must have Industrial Status Registration Certificate for operating hotel from Director of Tourism (Govt. of Maharashtra)."

3. The learned Counsel for the petitioner

submits that the contract is for operating tourist facility, operation and maintenance of viewing gallery and ground activities for two years at Ambora.

4. The argument is that on earlier occasion, the petitioner had successfully submitted the bid and operated the facility for a period of one year i.e. 2024-2025. The learned Counsel for the petitioner submits that the entire work has been completed successfully and there is no grievance against him. The learned Counsel further submits that thus, the petitioner has an experience of the work, and therefore, is a person best suited for the work under the tender. He submits that by incorporating the aforesaid condition, the petitioner will be not eligible to submit the bid, as the petitioner Society does not have the registration certificate as required by Condition No.4. This condition according to the petitioner is arbitrary and will affect the petitioner's right as envisaged under Article 19[1][g] of the Constitution of India.

5. As against this, learned G.P./Senior Counsel submits that it is the prerogative of the employer to incorporate the conditions, so that the service of a

bidder, which according to the employer are best suited, could be availed. In support, he has relied upon the judgment of Hon'ble Supreme Court in case of **Balaji Ventures Pvt. Ltd. .vrs. Maharashtra State Power Generation Company Ltd. And another (2022 SCC Online SC 1967)**, wherein the Supreme Court has in identical matter took the following view :

“9. Now so far as the impugned judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12[V]. The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms of conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him. As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.

10.

11. In the case of Montecarlo Limited v. National Thermal Power Corporation Limited, [2016] 15 SCC 272, it is observed and held that the tender inviting authority is the best person to

understand and appreciate its requirement and tender documents, so long as there are no mala fides/arbitrariness etc. It is further observed and held that the Government must have freedom of contract and such action can be tested by applying Wednesbury principle and also examining whether it suffers from arbitrariness or bias or mala fides.

12. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and when it is found that clause 1.12[V] cannot be said to be arbitrary, mala fide and/or tailor made and the same shall be applicable to all the bidders/tenderers and there is justification also shown providing such a clause and even subsequently a corrigendum has been issued and even the Respondent No.2 private sidars also made it clear that uniform charge shall be quoted for each bidder and even clause 1.12(V) was modified to the extent the necessary permission/consent/no objection certificate that was required at the time of submission of the bid was now required to be submitted before the opening of the price bid and the date for submission of the bid was extended, the High Court has rightly dismissed the writ petition and has rightly refused to interfere with the decisions of the respondents providing clause 1.12(V) of the tender document.”*

6. As can be seen, the Supreme Court has held that owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is fund to be arbitrary, mala fide and/or tailor made.

7. It is not the case of the petitioner that the

impugned condition is tailor made or the respondents have incorporated the same to favour a particular bidder. That being so, merely because the condition does not suit the petitioner or it affects in submitting bid, one cannot label said condition to be arbitrary. The petition is thus without merits and the same is accordingly dismissed.

JUDGE

JUDGE