



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

WRIT PETITION NO. 6429 OF 2024

SM Motor & Construction,
through it's Proprietor
Mohammad Aasim Ansari,
Aged about 29 years, Occ.-Business,
R/o Gulmohar Park, Yavatmal.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
- 2) Collector, Yavatmal,
Collector Office, Yavatmal.
- 3) District Mining Officer,
Collector Office, Yavatmal.
- 4) Gayatri Traders,
through it's Proprietor-
Prashant Krushnarao Dagwar,
Occupation – Business,
Aged about 40 years,
R/o Donadkar Layout, Near Tirupati
Society, Pimpalgaon, Yavatmal.

.... **RESPONDENTS**

Mr. S.O. Ahmed, Counsel for the petitioner,
Mr. D.V. Chauhan, Senior Counsel & Government Pleader a/b. Mr. N.S.
Rao, Assistant Government Pleader for respondent Nos. 1 to 3,
Mr. V.D. Darne, Counsel for respondent No.4.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATE : 05-05-2025

JUDGMENT : (Per : ABHAY J. MANTRI, J.)

Heard. **RULE.** Heard finally with the consent of the learned
Counsel for the parties.

2. The petition questions the order dated 30-09-2024 passed by respondent No.2-Collector, Yavatmal, whereby he issued Letter of Intent (LOI) in favour of respondent No.4 for excavation, transportation of silty sand of the river bed of Mouza Kotha, Tahsil Kalamb, District Yavatmal to the sand depot and construction and management of the sand depot, which is contended to be in violation of the Government Resolution dated 16-02-2024. Hence, the petitioner has preferred this petition.

3. **FACTUAL MATRIX :**

(a) The petitioner is involved in excavation, transportation of the silty sand to the depot and construction and management of the depot. On 19-04-2023, respondent No.1 had issued a Government Resolution (for short, '*G.R. dated 19.04.2023*') for the issuance of e-Tender regarding the excavation of the silty sand from the river bed, its transportation to the depot and construction and management of the sand depot, for the sand ghats in the entire State of Maharashtra. The purchase price of one ton of silty sand was fixed to be Rs. 133/- per ton (Rs. 600/- per brass). The Government had decided to sell the same to the purchasers at the price incurred for excavating the said sand and transporting it to the sand depot on a '*no profit and no loss*' basis. The G.R. dated 19-04-2023 was revised and superseded by the Government Resolution dated 16-02-2024 (for short, '*G.R. dated 16.02.2024*'), and the terms and conditions were modified.

(b) Pursuant to the G.R. dated 16-02-2024, respondent No.2-Collector, Yavatmal, had issued e-Tender notice for the year 2023-2024 for excavation of silty sand from the place in the river bed of Mouza **Kotha**, Tahsil Kalamb, District Yavatmal, its transportation to the depot and construction and management of the depot having Tender I.D. No.2024_YAVML_989542_1. The said e-Tender notice was published on 23-01-2024. In view of the advertisement, the bids were submitted by several persons/companies, of which five were qualified for the financial bid. The petitioner was not qualified among the said five persons/companies. One Saikrupa Enterprises was declared L-1, which quoted the lowest bid of Rs.0.45/- per ton, and respondent No.4 was declared L-3, which quoted a bid of Rs.1/- per ton. However, the said bid was cancelled on 20-02-2024 on the grounds that the bid price quoted by the lowest bidder was unrealistic.

(c) Similarly, the e-Tender was published for Mouza Manakpur, Tahsil Kalamb, District Yavatmal. Three companies were qualified in the financial bid. In the said bid, neither the petitioner nor respondent No.4 was qualified. Saikrupa Enterprises was declared L-1, which quoted the lowest bid of Rs.0.90/- per ton, and the other two bidders quoted Rs.1/- per ton. On 20-02-2024, the said bid was also cancelled on the same ground.

(d) Thereafter, respondent No.2-Collector, Yavatmal floated a new tender notice for Mouza **Kotha**, by publishing the second e-Tender on

29-02-2024 for the year 2023-2024. As per the said advertisement, the schedule for publishing e-Tender, pre-meeting, deposit of the amount online and the last date of acceptance of the e-Tender and opening of it was given as under :

अ.क्र.	तपशिल	तारीख व वेळ
१.	ई-निविदा प्रसिध्द दिनांक	दिनांक १२.३.२०२४
२.	ई-निविदा पुर्व बैठक	दिनांक १३.३.२०२४
३.	ई-निविदा रक्कम ऑनलाईन जमा करणे	दिनांक २६.०३.२०२४ दुपारी ०१.०० वाजेपर्यंत
४.	ई-निविदा स्विकारण्याचा अंतिम दिनांक	दिनांक २६.०३.२०२४ दुपारी ०१.०० वाजेपर्यंत
५.	ई-निविदा उघडण्याचा दिनांक	दिनांक २७.०३.२०२४ दुपारी ०१.०० वाजेपर्यंत

The terms and conditions/guidelines for the bidders of the e-Tender process regarding the e-Tender notice were also available along with the advertisement. Pursuant to the said second e-Tender notice, several persons/companies submitted the bids. Out of them, five persons/companies were qualified (Page 228) in the financial bid as under :

S.No.	Bid Number	Bidder Name	Submitted Date	Status	Remarks	Status Updated on
1.	5881655	Gayatri Traders	26-Mar-2024 12:33 PM	Accepted-AOC	L1	30-Sep-2024 06:23 PM
2.	5880232	Pravin Mude	26-Mar-2024 12:36 PM	Rejected-Technical	Reject	14-Jun-2024 02:14 PM
3	5880056	PRITHVI BUILD- ING MATERIAL SUPPLIERS	26-Mar-2024 11:24 PM	Rejected-Finance	L2	30-Sep-2024 06:22 PM

4.	5880607	SM MOTOR & CONSTRUCTION 3. Additional trade names, if any, are null 4 Constitution of Business Proprietorship 5. Address of Principal Place of Business	26-Mar-2024 12:37 PM	Rejected-Finance	L3	30-Sep-2024 06:22 PM
5.	5879990	SUMIT BUILDING MATERIAL SUPPLIER AND TRANSPORT	26-MAR-2024 12:59 PM	Rejected-Finance	L4	30-Sep-2024 06:22 PM

Respondent No.4 was declared L-1, who quoted the bid price of **Rs.0.999/-** paisa **per ton**. One Prithvi Building Material Supplier was declared as L-2, who quoted the bid price of **Rs.1/- per ton**, and the petitioner was declared as L-3, who quoted the bid price of **Rs.1.42/- per ton**; hence, their financial bid was rejected. Respondent No.4 was declared as L-1 and accordingly, LOI was issued in its favour on 30-09-2024. Aggrieved by the said order, the petitioner has preferred this writ petition.

4. We have heard the respective parties at length and gone through the impugned order, terms and conditions of the e-Tender notice, G.R. dated 16-02-2024, and the decisions relied upon by the respective parties. We have also gone through the record.

5. The crucial question that falls for our consideration is :-

*“Whether the grant of tender for excavation, transportation of silty sand of the river bed of Mouza **Kotha**, Tahsil Kalamb, District Yavatmal to the sand depot and construction and material of the sand depot in favour of respondent No.4 was issued in violation of the mandate of the G. R. dated 16-02-2024 and terms and conditions of the e-Tender notice.”*

While dealing with the controversy between the parties, we would like to reproduce the law laid down by the Hon’ble Apex Court in paragraph Nos. 48 to 54 of the decision in ***Tata Motors Limited V. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others, 2023 SCC OnLine SC 671***, as under :

“48. This Court, being the guardian of fundamental rights, is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loath to interfere in contractual matters unless a clear-cut case of arbitrariness, mala fides, bias, or irrationality is made out. One must remember that today, many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of [Article 12](#) of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues, the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder.

In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See: [Silppi Constructions Contractors v. Union of India](#), (2020) 16 SCC 489)

49. It is not in dispute that the first and the foremost requirement of the Tender was the prescribed operating range of the single-decker buses, which would operate for around an average of 200 Kms in a single charge in “actual conditions” with 80% Soc without any interruption. Then, the materials on record would indicate that TATA Motors, in its bid, deviated from this requirement and had informed BEST that it could carry the operating range in the “standard test conditions”, which was not in accordance with the Tender conditions. The High Court has rightly observed in its impugned judgment that the bid of TATA Motors failed to comply with the said clause. TATA Motors deviated from the material and essential terms of the Tender. It may not be out of place to state at this stage that it is only TATA Motors who deviated from the condition [referred to above](#). However, we are of the view that the High Court, having once declared TATA Motors as “non-responsive” and having stood disqualified from the Tender process, should not have entered into the fray of investigating the decision of BEST to declare EWEY as the eligible bidder. We are saying so because the High Court was not exercising its writ jurisdiction in the public interest. The High Court looked into a petition filed by a party trying to assert its own rights. As held by this Court in [Raunaq International Ltd.](#) (supra), the grant of judicial relief at the instance of a party that does not fulfil the requisite criteria is something that could be termed as misplaced. In [Raunaq International Ltd.](#) (supra), this Court observed as under:

“27. In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s Raunaq International Ltd. is on valid principles, looking to the expertise of the tenderer and his past experience, although it does not exactly tally with the prescribed criteria. **What is more relevant, M/s I.V.R. Construction Ltd. who have challenged this award of tender themselves do not fulfil the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced.** Even if the criteria can be relaxed both for M/s Raunaq International Ltd. and M/s I.V.R. Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower, and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted. It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210 MW, is held up on account of this dispute.

Shortages of power have become notorious. They also seriously affect industrial development and the resulting job opportunities for a large number of people. In the present case, there is no overwhelming public interest in stopping the project. There is no allegation whatsoever of any mala fides or collateral reasons for granting the contract to M/s. Raunaq International Ltd.” (Emphasis supplied)

50. We take notice of the fact that Annexure Y was originally required to be submitted by the “Successful Bidder” after the evaluation of the bid and the same did not figure in the list of documents and annexures to be included in the technical submissions, as provided under Clause 5.1.1 of Schedule II of the Tender. Further, the format provided for Annexure Y in the Tender documents in its heading states that the “Successful Bidders shall upload a Letter of Undertaking on their letter head as below”. Therefore, we are of the view that the restriction on revision of documents under Clause 16 of Schedule I, which states, “No addition/correction, submission of documents will be allowed after opening of technical bid,” is only limited to the documents necessary to be included in the technical bid and would not be applicable to any such document which does not form a part of the technical bid.

51. We are of the view that the High Court should have been a bit slow and circumspect in reversing the action of BEST permitting EVEY to submit a revised Annexure Y. We are of the view that the BEST committed no error or cannot be held guilty of favoritism, etc. in allowing EVEY to submit a revised Annexure Y as the earlier one was incorrect on account of a clerical error. This exercise itself was not sufficient to declare the entire bid offered by EVEY as unlawful or illegal.

52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume a lot of time and also result in a loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-judge Bench decision of this Court in [Association of Registration Plates v. Union of India and Others](#), reported in (2005) 1 SCC 679.

53. The law relating to the award of contracts by the State and public sector corporations was reviewed in [Air India Ltd. v. Cochin International Airport Ltd.](#), reported in (2000) 2 SCC 617. It was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method

to arrive at a decision, and it is free to grant any relaxation for bona fide reasons if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities, and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in *Jagdish Mandal v. State of Orissa and Others*, reported in (2007) 14 SCC 517, while invoking the power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to the award of the contract is bona fide and is in the public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

6. Similarly, in *Subodh Kumar Singh Rathour V. Chief Executive Officer and others*, 2024 SCC OnLine Sc 1682, the Three Judge Bench of the Hon'ble Apex Court, after considering the various decisions of the Apex Court, has held that :

“Where the State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. Therefore, writ is maintainable against the order of cancellation of the tender if the same is found to be arbitrary. In view of the above settled position of law, it

would be appropriate to scrutinise the facts of the case at hand to determine the controversy between the parties.”
(Emphasis supplied)

SUBMISSION ON BEHALF OF THE PETITIONER :

7. Mr. S.O. Ahmed, learned Counsel for the petitioner, submitted that passing of the impugned order by respondent No.2-Collector, Yavatmal thereby granting tender for excavation, transportation of silty sand of the river bed of Mouza Kotha in favour of respondent No.4 is illegal and arbitrary to the terms and conditions of the tender notice. He drew our attention to the e-Tender proceedings conducted at Mouza Kotha as well as Mouza Manakpur, which were cancelled on the ground that the bid price quoted by the lowest bidder was unrealistic. He further harped on Clause 8 of the Tender Process in Chapter 3 (Page 71) and submitted that, as per said clause, *‘the LOI has to be issued within a period of two days from the opening of the financial bid’*. However, in the case at hand, the financial bid was opened on 14-06-2024, and the LOI was issued on 25-09-2024, i.e. contrary to Clause 8 of the Government Resolution; and the tendering authority failed to explain the delay, therefore, on that ground alone, the tender has to be cancelled. He drew our attention to *Clause 8* of the said Government Resolution.

SUBMISSION ON BEHALF OF THE RESPONDENTS :

8. Mr. D.V. Chauhan, learned Government Pleader and Senior Counsel for respondents No.1 to 3 and Mr. V.D. Darne, learned Counsel for

respondent No.4, vehemently submitted that Clause 8 of the Government Resolution is not mandatory in nature to issue the LOI within two days. The said condition is general. Therefore, it would not be proper to say that non-compliance with the said condition would be liable to terminate the tender notice. The learned Government Pleader argued that it is not disputed that as per Clause 8, the LOI needs to be issued within two days to the successful bidder, however, respondent No.4, who was the lowest bidder, has quoted bid price of Rs.0.999 paisa per ton and considering the expenses which will be incurred for excavation of silty sand for the river bed, its transportation to the depot and construction and management of the sand depot, respondent No.2 by communication dated 01-07-2024 sought the guidance in the matter of Mouza Kotha sand depot auction from respondent No.1. Respondent No.1 by communication dated 22-08-2024 informed to respondent No.2 to take a decision on his behalf in terms and conditions of the G. R. dated 16-02-2024. Thereafter, respondent No.2-Collector called the District Level Sand Monitoring Committee meeting on 30-08-2024. In the meeting, they unanimously decided to allot the tender to respondent No.4, and accordingly, the LOI was issued in favour of respondent No.4 on 25-09-2024. Hence, it cannot be said that the respondents have violated Clause 8 of the G.R.

9. While determining the said controversy, it would be proper to reproduce Clause 8 of the G. R. dated 16-02-2024 as under :

“८) सदर यशस्वी बोलीधारकास ०२ दिवसांचे आत जिल्हाधिकारी यांच्या कार्यालयाकडून इरादा पत्र (LOI) देण्याची कार्यवाही करण्यात यावी.”

A bare perusal of the title of Chapter 3 of the G.R dated 16.02.2024 regarding the tender process reveals that the said chapter is titled as ‘*General Guidelines*’ for the tender process. The title itself indicates that those are the “general guidelines regarding the tender process. Therefore, it cannot be construed as a mandatory condition. Thus, considering the purpose and intent of Chapter 3 of the G.R. dated 16-02-2024, it would mean that Clause No.8 is nothing but a general guideline to follow while implementing the tender process. Therefore, we do not find substance in the argument of the petitioner regarding the fact that respondent No.2 has violated the condition incorporated in Clause No.8 of the G.R. dated 16-02-2024.

10. Mr. S.O. Ahmed, learned Counsel for the petitioner, further drew our attention to Clause/Condition No.6 of the general guideline/term and conditions of tender notice and emphasised that respondent No.4 failed to satisfy the said condition in its proper perspective as at the time of technical bid, he had not submitted/uploaded the document that he had possessed ‘water tanker’ and thereby violated Condition No.6 of the said guideline. However, respondent No.2 has not considered the said fact and granted LOI in favour of respondent No.4 contrary to said Clause No.6. Therefore, he submitted that the tender bid is liable to be cancelled on

that ground. In support of his contentions, he has relied on the decisions in *Jai Bholenath Construction V. Chief Executive Officer, Zilla Parishad, Nanded and Ors.*, AIR Online 2022 SC 867 and *M/s. Monarch Infrastructure (P) Ltd. V. Commissioner, Ulhasnagar Municipal Corporation and others*, 2000 AIR SC 2272.

11. On the other hand, Mr. D.V. Chauhan, learned Government Pleader and Senior Counsel for respondent Nos. 1 to 3 and Mr. V.D. Darne, learned Counsel for respondent No.4, have submitted that said Clause No.6 was substantially complied by respondent No.4, but only the document in respect of 'water tank' was not uploaded on the website, which was subsequently adhered to it. Hence, the respondent tendering authority has rightly considered the said fact and, within its discretion, granted the tender in favour of respondent No.4, therefore, it cannot be said that the tender bid is liable to be cancelled.

12. While dealing with the issue in dispute, it would be proper to reproduce Clause 6 of the said guidelines, as under :

“६. व्यक्ती किंवा संस्था यांच्या मालकीचा ट्रॅक्टर, ६ टायराचे टिप्पर, पाण्याचे टँकर, भराईयंत्र (लोडर) इत्यादी वाहनाचे आर.सी.बुक. फिटनेस प्रमाणपत्र (संबंधित सक्षम अधिका-याने दिलेले साक्षांकीत प्रत) व विमा, प्रपत्र-४ नुसार कागदपत्रे.
किंवा

व्यक्ती किंवा संस्था यांनी निविदा प्राप्त झाल्यास व्यक्ती / संस्था यांनी भाडेतत्वावर ट्रॅक्टर, ६ टायराचे टिप्पर, पाण्याचे टँकर, भराईयंत्र (लोडर) व इतर वाहने घेण्याकरीता केलेला करारनामा (१००) रुपयाचा स्टॅम्प पेपरवर नोटरीज्ड केलेला), तसेच वाहनाबाबतचे आर.सी.बुक. फिटनेस प्रमाणपत्र (संबंधित सक्षम अधिका-याने दिलेले साक्षांकीत प्रत) व विमा, प्रपत्र-४ नुसार कागदपत्रे.”

13. Similarly, we would like to reproduce terms and conditions Nos.

1(a), 3, 5 and 12 of Tender document, as under :

‘१) अ) गाळ व गाळमिश्रीत वाळूचे उत्खनन, उत्खननानंतर गाळ व गाळमिश्रीत वाळूची डेपोपर्यंत वाहतूक याबाबत अटी व शर्ती :

१.

२.

३. **नदीपात्रापासून डेपोपर्यंत वाहतूक ट्रॅक्टरद्वारे अथवा कमाल ६ टायरच्या (टिप्पर) वाहना मार्फत करणे बंधनकारक राहिल.**

४.

५. **नदीपात्र ते डेपोपर्यंत वाहतूक करणा-या ट्रॅक्टर व ६ टायरच्या टिप्परची संख्या व त्यांचे क्रमांक नोंदणी करून घेण्यात यावे.** या वाहनाव्यतिरिक्त इतर वाहनांद्वारे वाळू वाहतूक केल्याचे आढळून आल्यास अशी वाळू वाहतूक अवैध समजून संबंधित निविदाधारक/कंत्राटधारकावर नियमानुसार दंडात्मक कारवाई व पुढील कारवाई करण्यात येईल.

६ ते ११

१२. अवैध उत्खनन व वाहतूक कारवाई मध्ये जप्त केलेली वाळू/रेती, त्याच्या नजीक वाळू डेपोमध्ये निविदाधारकाकडे नोंद असलेल्या **ट्रॅक्टर अथवा कमाल ६ टायरच्या (टिप्पर)** ज्याच्या दर्शनी भागास पिवळा रंग दिलेला आहे अशा वाहनातून नजीकच्या वाळू डेपोमध्ये वाहतूक करून साठवणूक करण्यात येईल व त्याची नोंद महास्वनिज प्रणालीवर घेण्यात येईल. जप्त केलेल्या वाळू/रेतीची वाळू डेपोपर्यंतच्या वाहतूकीसाठी निविदाधारकास रक्कम अनुज्ञेय असणार नाही.’

14. A bare perusal of Clause Nos. 3, 5, and 12 would indicate that the presence of equipment such as a **tractor** and a **6-tyre tipper** is necessary to execute the tender work. The ‘water tanker’ is mentioned as ancillary equipment. He submitted the document about the tractor, which was uploaded, but only the document regarding the water tanker, i.e., the equipment attached to the back of a tractor, was not uploaded. However, before issuance of the LOI, he submitted the document to the tendering authority.

15. We would like to reproduce **Clause No.3** of Chapter 3 of G.R. dated 16.02.2024 as under :

"३) प्रस्तावित निविदासंदर्भात काही तक्रारी / आक्षेप / सूचना प्राप्त झाल्यास जिल्हाधिकारी/ अपर जिल्हाधिकारी व संयुक्त वाळूगटाच्या बाबतीत विभागीय आयुक्त यांनी त्याची तपासणी / चौकशी करावी व चौकशीच्या अनुषंगाने संबंधित वाळूगटाच्या निविदेच्या प्रक्रियेबाबत योग्य तो निर्णय घेतील."

A bare perusal of the said clause indicates that respondent No.2, the tendering authority, was empowered to take an appropriate decision concerning any objection or grievance raised before them. The said clause itself shows that the tendering authority has the discretion to consider the fact of non-uploading the documents in respect of the 'water tanker' by respondent No.4 to permit it to submit the documents in respect of the trolley later on.

16. Apart from this, the tender condition will have to be interpreted in the background of the tender work and looked into their entirety, whether for excavation and transporting the sand from the river bed to the sand depot, or to construction and management of the sand depot, whether a water tanker is required or not. In our opinion, the answer to the query is negative; in such an event, not uploading the document with respect to the 'water tanker' would not hamper the excavation work of sand. Thus, in our view, the requirement of water tanker equipment is an optional one and not mandatory. Moreover, the tendering authority is competent to take a decision in respect of the execution of the tender work in its proper

perspective and, therefore, the non-uploading of the document by respondent No.4 would not affect the entire tender process, which was issued for the second time. Consequently, we disagree with the argument made by the learned Counsel for the petitioner regarding the fact that respondent No.4 failed to satisfy Clause No.6 of the terms and conditions of the tender notice.

17. In *Jai Bholenath Construction (supra)*, the appellant therein was found to be the lowest bidder, but the LOI was not issued to it, and respondent No.4 therein was excluded from the process and was declared ineligible for non-compliance with the document. However, the bid of respondent No.4 was subsequently accepted, which was challenged by the appellant on the grounds of arbitrary exercise of power by the tendering authority. The civil appeal was disposed of based on the corrigendum dated 24-11-2021. However, the facts in the case at hand are distinct from the said case; therefore, what has been held in the said case is not applicable in the present case.

18. In *M/s. Monarch Infrastructure (P) Ltd. (supra)*, the successful bidder, had not fulfilled the condition relating to Clause No.6 of the tender notice therein. Therefore, the High Court had set aside the award of the contract in favour of the petitioner therein, which the petitioner challenged before the Hon'ble Apex Court. The Hon'ble Apex Court has

confirmed the order passed by the High Court. However, in the case in hand, the petitioner failed to demonstrate that respondent No.4 has been unable to fulfil the mandatory condition of the Government Resolution or terms and conditions of the tender notice, and, therefore, the dictum laid down in the above decision is not helpful for the petitioner in support of his contention.

19. Mr. S.O. Ahmed, learned Counsel for the petitioner, during argument had tendered across the bar a copy of the order dated 17-08-2021 passed by the Tahsildar, Arni directing respondent No.4 to pay penalty of Rs.3,29,47,356/- with the Government as imposed under Section 48(8) of the Maharashtra Land Revenue Code. He, therefore, submitted that respondent No.4 failed to comply with the said order and suppress the same from the tendering authority and in alternative submitted that false affidavit was filed by the respondent No.4 in that regard, hence, on that ground also, the tender granted in favour of respondent No.4 has to be cancelled as it had suppressed the said fact from the tendering authority and thereby cheated them. However, the said order was passed in 2021, and the present tender notice was issued in 2024, i.e. after a period of three years. The petitioner failed to produce any recent document about non-compliance with the said order by respondent No.4, but only produced the said order, which does not disclose whether respondent No.4 had complied with the said order or

not. Besides, the Tahsildar, Arni, has not given any information to respondent No.2-Collector about non-payment of penalty by respondent No.4. Had it been the fact that if the penalty were not paid by respondent No.4, then certainly the Tahsildar, Arni, would have informed the said fact to respondent No.2-Collector. No document has been produced on record by the petitioner to demonstrate that respondent No.4 failed to comply with the said order. Therefore, it would not be proper to consider the submissions of the learned Counsel for the petitioner in that regard. *Furthermore*, in the petition, the petitioner has not stated the same nor raised any objection before the tendering authority to give them an opportunity to explain the said fact by them or respondent No. 4. Therefore, we do not find substance in the petitioner's contentions in that regard.

20. The petitioner in support of his contention has relied on the decision in *New Okhla Industrial Development Authority V. Ravindra Kumar Singhvi (Dead) through Lrs., 2022 AIR SC 928*. The facts of the said case were that the respondent therein obtained the plot from the petitioner authority by misleading them. Therefore, allotment of the plot was cancelled. Thus, the Court held that cancellation of allotment of a plot obtained by filing a false affidavit is the legitimate ground for cancellation of the lease. However, in the case at hand, the petitioner failed to demonstrate that respondent No.4 had not complied with the order of the

Tahsildar and suppressed the said fact from the competent authority or filed a false affidavit before the tendering authority. Therefore, the dictum laid down in the said judgment is hardly of any assistance to the petitioner.

21. It is pertinent to note that any of the bidders therein did not challenge the cancellation of earlier tenders by the order dated 20-02-2023. Moreover, the petitioner was not qualified for the financial bid in the said tender. Therefore, cancellation of the earlier tenders would not affect the subsequent re-tender proceedings.

22. It is undisputed that the petitioner was declared L-3; however, he has not made L-2 a party in the petition. Therefore, the petitioner cannot challenge the said order for non compliance with the tender conditions. Apart from this, the petitioner never raised a grievance about non compliance with the conditions or about opening the financial bid before the tendering authority to consider the same.

23. It is also pertinent to note that the Court, being a Constitutional functionary, is duty-bound to guard the rights of the parties to interfere when there is arbitrariness, irrationality, *mala fides*, and bias. *Likewise*, the Hon'ble Apex Court has cautioned time and again that the Court should usually refrain from exercising its power while exercising its

power in judicial review in contractual and commercial matters. Similarly, the Court is normally loath to interfere in contractual matters unless a clear-cut case of arbitrariness, *mala fides*, bias, or irrationality is made out.

24. In the wake of the above discussion, it is revealed that the petitioner failed to demonstrate that respondent No.4 has not complied with the terms and conditions of the Government Resolution dated 16-02-2024 or the terms and conditions of the tender notice. Similarly, the petitioner failed to show that the tendering authority has arbitrarily exercised powers with *mala fide* intention to deprive it of getting the said tender. Even assuming that respondent No.4 was not eligible, in that case, the petitioner, being L-3, is also not entitled to get the tender in question, as L-2 is eligible for the same. L-2 Prithvi Building Material Suppliers did not challenge the tender process. Therefore, we do not find that the decision taken by the competent authority is liable to be vitiated on the ground of arbitrariness, irrationality, *mala fide* and bias. Apart from this, the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. Therefore, the Court cannot examine the terms and conditions of the contract which have been entered into by the public bodies or the State. So also in view of the dictum laid down in the above cited judgments and the settled position of law, it would not be proper to interfere in the contractual disputes. Hence, we answer the question in the negative.

25. In such an eventuality, we do not find substance in the submissions of the learned Counsel for the petitioner and the petition, being bereft of merit, stands dismissed. The Interim relief, if any, is vacated. Rule is discharged. No order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

At this stage, the learned Counsel for the petitioner, seeks to continue the interim order for ten weeks. Since we have already held that the challenge in the petition is unsuccessful, we do not see it proper to continue the interim relief for a further period.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

adgokar