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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.264 OF 2026

1. Arjun Adhar Swayam Rojgar Seva
Sahakari Sanstha Maryadit
Through its Authorized Signatory
Mrs. Chhabita R.Galpalu
2. Mrs. Chhabita Ramchandra Galpalu,
Age: 51 years, Occu.: Chairman,

Both Having registered Address at-
Shri Ganesh Niwas, D-45, Arya Samaj
Chowk, Kailash Nagar, Pimpri,
Tal. - Haveli, Dist. Pune – 411017.

... Petitioners

VERSUS

1. State of Maharashtra,
Through the Government Pleader
Office of GP High Court Building
Chh. Sambhajinagar.
2. The Municipal Corporation of
Chh. Sambhaji Nagar
Through The Commissioner
V8RF+2QJ, Town Hall,Buddi Ln.
Naralibag, Haj House,
Aurangabad, Maharashtra – 431001.
3. The Deputy Engineer,
Electrical Dept.
The Municipal Corporation of
Chh. Sambhajinagar.
CSMC, V8RF+2QJ, Town Hall,Buddi Ln.
Naralibag, Haj House,
Aurangabad, Maharashtra – 431001.
4. The Executive Engineer (Electrical)
Smt. Mohini Sunil Warbhuwan,
Electrical Dept.
The Municipal Corporation of

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Chh. Sambhajinagar.
V8RF+2QJ, Town Hall,Buddi Ln.
Naralibag, Haj House,
Aurangabad, Maharashtra – 431001.

5. The Assistant Engineer (Electrical)
Electrical Dept.
The Municipal Corporation of
Chh. Sambhajinagar.
V8RF+2QJ, Town Hall,Buddi Ln.
Naralibag, Haj House,
Aurangabad, Maharashtra – 431001.

6. Junior Engineer
Mr. Sufiy An Sheikh,
Electrical Dept.
The Municipal Corporation of
Chh. Sambhajinagar.
V8RF+2QJ, Town Hall,Buddi Ln.
Naralibag, Haj House,
Aurangabad, Maharashtra – 431001.

... Respondents

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Ms. Priyanka N. Matlane, Advocate for Petitioners
Mr. S.B. Narwade, AGP for Respondent No.1-State

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**CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.**

DATED : 17 MARCH, 2026

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. Rule. Rule is made returnable forthwith. By consent of the parties, the petition is taken up for final disposal.
2. Heard the learned Advocate for the petitioners and the learned AGP for the State.

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3. This petition under Article 226 of the Constitution of India is filed to challenge the work order dated 29.07.2025 issued by respondent No.3 in favour of respondent No.7 in respect of the tender process initiated for supply, installation and commissioning of a new gas-fired pet incinerator for dead animals at Padegaon, Ghankachra Prakriya Kendra. The petitioners have also challenged the tender notice and have prayed for a direction to respondent No.3 to issue a fresh tender notice. A further prayer is made for refund of the earnest money deposit paid by the petitioners.

4. Petitioner No.1 is stated to be a co-operative society registered under the Maharashtra Co-operative Societies Act and petitioner No.2 is its Chairman. According to the petitioners, petitioner No.1 has been regularly participating in Government projects, has been taking part in tender processes, and has been executing such works in accordance with the applicable rules and procedure. It is their case that they possess the necessary licences, certificates and permissions required for participation in the tender in question. The record, as pleaded by the petitioners, shows that on 15.01.2025 respondent No.4 floated a tender notice on the Government portal for the aforesaid work. The tender was published as an open tender under the service category. The estimated value of the tender was shown as Rs.76,42,970/-. The petitioners

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submitted their bid in the said tender process. According to them, their financial bid was 5.20% below the tender amount and came to Rs.72,45,535.56. The petitioners further state that by communication dated 17.02.2025 they were called upon to submit documents relating to PWD electrical certificate and EPFO certificate for further scrutiny, and that they furnished the necessary documents by reply dated 18.02.2025. It is their case that by doing so they had complied with all requirements called for by the authorities. The petitioners have then stated that the tender bids were opened on 05.03.2025 and that there were in all four bidders whose names were shown on the portal. According to the petitioners, all four bids were accepted for further process and among those four bidders, the petitioners' bid was the lowest. Based on this, it is contended that petitioner No.1 ought to have been declared the successful bidder and the work order ought to have been issued in its favour. The grievance of the petitioners is that, instead of doing so, respondent No.3 issued the work order dated 29.07.2025 in favour of respondent No.7. The petitioners allege that the said action is illegal, arbitrary and contrary to the settled principles governing award of public contracts.

5. The learned Advocate for the petitioners submitted that once the petitioners were the lowest bidder among the selected bidders, the

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authorities were not justified in overlooking their bid. He submitted that the petitioners had responded to all requisitions raised by the authorities and that no valid reason existed for denying the contract to them. He further argued that the action of the authorities shows arbitrariness and a biased attitude against the petitioners. It was submitted that if a bidder is found eligible for participation and its financial bid is the lowest, the authority should ordinarily award the contract to such bidder. The learned Advocate for the petitioners also attacked the eligibility of respondent No.7. He submitted that respondent No.7 did not fulfill condition No.12 of the tender notice. According to him, under that condition a bidder could participate on the basis of a joint venture arrangement with a person holding a PWD electrical certificate. He submitted that the document relied upon by respondent No.7 and respondent No.8 was a notarized joint venture agreement dated 28.01.2025 and that the same did not establish due compliance with the tender condition in the manner required. It was, therefore, contended that the bid of respondent No.7 ought not to have been taken into account at all and that the work order issued in its favour deserves to be quashed.

6. The learned Assistant Government Pleader opposed the petition. He submitted, in the first place, that the challenge is belated. According

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to him, the work order had been issued on 29.07.2025, whereas the petitioners approached this Court much later and the matter is being effectively considered only thereafter. He submitted that in tender matters, where public work is involved, delay itself is a serious factor and the Court should be slow in unsettling a completed tender process at a belated stage. He further invited attention to the record to submit that the petition had not been diligently pursued even after filing and that the matter had come up only once earlier, when there was no appearance on behalf of the petitioners.

7. The learned Assistant Government Pleader then submitted that the petitioners themselves were not eligible to be awarded the contract as they had failed to comply with essential tender conditions, especially condition Nos.10 and 13. He relied upon the notice dated 19.05.2025 issued by the Executive Engineer of the Electrical Department of Chhatrapati Sambhaji Nagar Municipal Corporation. He submitted that by the said notice the petitioners were informed that they had not complied with the relevant conditions of the tender. He submitted that condition No.10 required the bidder to be an original manufacturer and supplier having at least four years' experience of supplying the relevant equipment to Government, semi-Government bodies or registered societies. He further submitted that condition No.13 required the bidder

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to certify the documents uploaded with the tender by filing an affidavit on stamp paper of Rs.500/- affirming that the documents were true and correct. The learned Assistant Government Pleader further submitted that during inspection conducted on 03.05.2025, the authorities found that the information furnished by the petitioners regarding their manufacturing unit and workers was not correct. According to him, the authorities noticed that there was no such unit available in the manner claimed by the petitioners at the address furnished by them. He submitted that only a temporary board was found displayed there and that even the details gathered at the site did not support the claim made in the tender papers. He further submitted that the particulars of workers stated to be employed by the petitioners also did not match on verification and that the electricity meter at the premises stood in a different name. He argued that when such deficiencies in an essential eligibility condition were noticed, the petitioners were given an opportunity to explain, but their reply did not remove the defects. It was, therefore, submitted that an ineligible bidder cannot claim award of the contract merely because its quoted amount is lower.

8. Having heard the learned counsel for the parties and having perused the material placed on record, we are of the considered view that no case is made out for interference in exercise of writ jurisdiction.

9. Before considering the rival factual contentions, it is necessary to note the legal position regarding the claim of a lowest bidder in a public tender. A bidder who quotes the lowest rate does not, by that fact alone, obtain a legal right to demand that the contract must be awarded to him. What the law gives to such bidder is a right to fair, equal and non-arbitrary consideration in the tender process. The authority inviting the tender is required to act fairly, transparently and in accordance with the tender conditions, but the Court does not sit as an appellate authority to decide which bidder should have been selected. The Court is concerned mainly with the legality of the decision-making process.

10. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the Supreme Court held that judicial review in contractual matters is directed to the decision-making process and not to the merits of the decision itself. In *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517, the Supreme Court explained that interference is called for only when the action is *mala fide*, arbitrary, irrational, intended to favour someone, or such that no responsible authority acting reasonably and in accordance with law could have taken such decision. In *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216, the Supreme Court reiterated that the basic requirement of Article 14 of the Constitution of India is fairness in action and that greater latitude is

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required to be given to the State in the matter of formulating tender conditions and awarding contracts. In *N.G. Projects Ltd. v. Vinod Kumar Jain, (2022)* 6 SCC 127, the Supreme Court again cautioned that in commercial tender matters the Court should not take over the decision making function of the employer and should resist attempts by unsuccessful tenderers to convert commercial disappointment into judicial review proceedings. The legal position which emerges from these decisions can be stated simply. First, being L1 does not by itself create a vested or enforceable right to the contract. Second, the status of being the lowest bidder becomes relevant only if the bidder is otherwise eligible and has complied with the essential terms of the tender. Third, even in the case of an eligible bidder, the Court will not compel acceptance of the bid unless it is shown that the action of the authority is arbitrary, *mala fide* or contrary to law. Fourth, in matters involving public work and public funds, the authority is entitled to insist upon strict compliance with essential eligibility conditions and the Court normally will not dilute such conditions in favour of one bidder.

11. In the present case, the petitioners' entire claim is built on the foundation that they were the lowest bidder and therefore they should have been awarded the tender. That argument cannot be accepted in that broad form. Their financial bid could become relevant only if they

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had first shown full compliance with the essential conditions of the tender. Therefore, the first question which requires examination is whether the petitioners had established such compliance. The tender conditions placed on record show that condition No.10 required the bidder to be an original manufacturer and supplier along with at least four years' experience of supply of the relevant equipment to Government, semi-Government bodies or registered societies. Condition No.13 required the bidder to certify the correctness of the documents submitted along with the tender by uploading an affidavit executed on stamp paper. These are not minor or technical conditions. Condition No.10 goes to the root of the technical capacity and basic eligibility of the bidder. Condition No.13 goes to the authenticity and reliability of the material submitted in support of eligibility. An authority inviting a tender for supply, installation and commissioning of a specialized gas fired incinerator is fully justified in treating such conditions as essential. Under the law laid down by the Hon'ble Supreme Court in above decisions, the tendering authority is entitled to insist on such essential conditions and the Court cannot rewrite the tender by treating them as optional merely because a bidder has quoted a lower rate. The notice dated 19.05.2025 issued to the petitioners is of considerable importance. That notice records that during the inspection of the premises on 03.05.2025, the authority found that the petitioners did not

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have a unit available in the manner represented by them in the bid documents. The notice also records that only a temporary board was found and that there were discrepancies regarding the identity of the establishment, the workers shown by the petitioners, and the electricity meter installed at the site. The notice, therefore, specifically called upon the petitioners to explain the deficiencies and to show cause why the tender should still be allotted to them despite such shortcomings. Thus, this is not a case where the petitioners were rejected behind their back or without any opportunity. The record shows that the petitioners were informed of the deficiencies and were given a chance to explain.

12. The reply submitted by the petitioners to the said notice, instead of removing the difficulty, in fact shows that petitioner No.1 was not satisfying condition No.10 in its own right. In the reply, the petitioners relied on a memorandum of understanding dated 01.09.2024 with another concern and sought to explain that they would carry out the tender work together. However, when queried during the hearing, it was fairly stated that petitioner No.1 itself does not have a manufacturing unit. It was also stated that the bid was not submitted in the name of a joint venture between petitioner No.1 and the said other concern, but only in the name of petitioner No.1. These facts are significant. If the bidder itself did not possess the required manufacturing status and

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experience, and if the bid itself was not submitted as a joint venture in the manner contemplated by the tender, then the petitioners cannot later cure the defect by referring to some separate private arrangement with a third party. The authority was justified in treating this as non-compliance with an essential eligibility condition.

13. The submission of the petitioners that since four bids were opened and their bid was the lowest, the authority had no option but to award them the contract, also cannot be accepted. Opening of a bid or permitting a bidder to remain in the process up to a certain stage does not mean that the authority loses its power to examine whether the bidder satisfies all essential conditions. The tendering authority is not powerless to reject a bidder later if on verification it finds that the bidder does not possess the required qualification or has furnished incorrect information. The law in tender matters does not require the authority to award the contract to an ineligible bidder merely because the price quoted by such bidder is lower.

14. The argument that respondent No.7 was itself ineligible on account of the joint venture document also does not advance the case of the petitioners. Once it is found that the petitioners themselves were not eligible, they cannot claim a writ directing award of the contract in their favour by pointing out alleged defects in the case of another bidder. A

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person who does not possess an enforceable right cannot obtain relief merely by showing that the successful bidder also ought to have been rejected. The Court in writ jurisdiction is required to see whether the petitioners have established a legal right and corresponding illegality in the action complained of. On the material before the Court, that burden has not been discharged by the petitioners.

15. There is one more aspect which cannot be ignored. The inspection report and the show cause notice suggest that the authority found not merely absence of compliance but also serious discrepancies in the factual assertions made by the petitioners regarding their premises, workers and related particulars. At this stage, we do not consider it necessary to record a final finding in this writ petition on whether the conduct amounts to fraud in the strict legal sense. That aspect can more appropriately be examined by the competent authority in separate proceedings, if the law permits, after following due process. However, for the purpose of the present case, it is enough to hold that the authority had relevant material before it to conclude that the petitioners' claim of eligibility was not acceptable. Therefore, the impugned action cannot be described as arbitrary or baseless.

16. The objection regarding delay and lack of diligence in pursuing the matter also deserves acceptance. The work order was issued on

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29.07.2025. The challenge was not pursued with promptness. Tender matters stand on a special footing because they involve public projects, public funds and timelines for execution. Once a contract has been awarded and the process has moved forward, the Court must be slow in unsettling the same at a belated stage, unless a clear case of arbitrariness, *mala fides* or illegality of a serious nature is made out. The Hon'ble Supreme Court in ***N.G. Projects*** (supra) has emphasized that unsuccessful tenderers should not be permitted to derail public projects on insubstantial grounds and that the Court should exercise restraint in such matters. In the facts of the present case, this is an additional reason for refusing relief.

17. The prayer for refund of earnest money deposit also cannot be granted in these proceedings. The question whether the earnest money deposit is liable to be refunded or forfeited depends upon the tender conditions and upon the decision of the competent authority in accordance with those conditions. In the facts of the present case, where the petitioners have failed to establish eligibility and where proceedings pursuant to the show cause notice are stated to have been initiated, no writ can be issued directing refund of the earnest money deposit as a matter of course.

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18. We also find that The conduct attributed to the petitioners justify further action by the authority, but what action must necessarily follow must precede due process required by law. Such action has civil consequences. Therefore, while it is open to respondent No.4 to proceed further on the basis of the show cause notice dated 19 May 2025 and to take the matter to its logical end in accordance with law. The proper course is to leave that issue to the competent authority to decide on its own merits after following the required procedure.

19. For all these reasons, we are satisfied that the petitioners have failed to make out any case for interference. The petitioners did not establish compliance with essential tender conditions, particularly the requirement relating to being an original manufacturer and supplier with the prescribed experience. Their bid was submitted only in the name of petitioner No.1. Their own explanation shows reliance upon another concern outside the structure in which the bid was actually submitted. Their status as the lowest bidder, therefore, does not create any enforceable right. The action of the respondent authorities in not awarding the contract to the petitioners and in issuing the work order in favour of respondent No.7 cannot, on the material before the Court, be termed arbitrary, unreasonable or contrary to law.

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20. The writ petition is, therefore, dismissed. Rule stands discharged.

21. Respondent No.4 shall be at liberty to proceed further pursuant to the show cause notice dated 19.05.2025 and to take such action as may be permissible in law, after following due process.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane