



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO.1575 OF 2026

NEHA ELECTRICAL SERVICES THROUGH ITS PROPRIETOR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. V.B. Dhage, Advocate for petitioner
Miss. Neha B. Kamble, AGP for respondent No.1
Mr. A.S. Bajaj, Advocate for respondent Nos.2 to 4

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CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.

DATE : 26th FEBRUARY, 2026

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

. The petitioner challenges the condition of eligibility and qualifying criteria in tender published by respondent No.3 on 29.01.2026 and 30.01.2026.

2 Heard learned Advocate Mr. V.B. Dhage for petitioner, learned AGP Miss. Neha B. Kamble for respondent No.1 and learned Advocate Mr. A.S. Bajaj for respondent Nos.2 to 4.

3 Learned Advocate for petitioner submits that petitioner is a registered contractor and indulged in the various types of work with respondent authorities viz. construction, erection, testing, commissioning and maintenance of HT/LT overhead lines/underground cables, DTC, repairing and maintenance work of HT/LT lines and DTC work under O & M divisions, installing and uninstalling the filed and repaired transformers etc. of various public authorities since 1998.

4 The petitioner has attached the documents to show his experience and also work done certificate in respect of work carried out by him. Respondent Nos.2 to 4 had floated a tender for works of Breakdown Maintenance of distribution transformer centre as well as infrastructure development for release of new connections/enhancement of load (RCI) etc. in the year 2019 initially for a period of three years and then extended further for a period of two years. According to petitioner, though the petitioner was eligible, he was not awarded with the said work and, therefore, he was not having opportunity to do the said work. Now, two tenders have been issued for execution of electrical distribution infrastructure works of similar nature and NSC works. Respondents have put a condition that experience of erection and maintenance of minimum 20 HT overhead lines / underground cables (DTC) during the last five years in one tender and

in another tender experience of execution of minimum 30 k.ms. HT/LT overhead lines or 10 k.ms. HT/LT underground cable and 20 Distribution Transformers during the last three years has been clamped. After 2019 there was no fresh tender floated by respondent authorities and, therefore, the persons like petitioner could not get the experience in that specific field. Though the petitioner is having 26 years of experience; yet due to this specific condition persons like him have been kept away with ulterior motive. Respondents want to give the contract to a particular section or particular person and, therefore, such prejudicial condition deserves to be removed.

5 Learned Advocate for petitioner relies on the decision in **Vinishma Technologies Pvt. Ltd. vs. State of Chhattisgarh and another** [2025 SCC OnLine SC 2119], wherein after relying on **Union of India vs. Bharat Forge Ltd.** [(2022) 17 SCC 165] has enunciated the doctrine of level playing field and has stated that the same finds expression in Article 19(1)(g) of the Constitution. The doctrine of level playing field requires that all equally placed competitors must be given an equal opportunity to participate in trade and commerce. It is designed to prevent the State from skewing the market in favour of few by erecting artificial barriers.

6 Learned Advocate for respondent Nos.2 to 4 submits that if we

read the said condition regarding the eligibility, it can be seen that the experience has then further been clarified that, “*Work experiences of the bidder as per above shall be considered only if the works have been considered under Government / Semi Government / autonomous body of Central / State Government / Electricity Power Utility / Public Works, Distribution franchisee appointed by MSEDCL and under Dedicated Distribution Facility (DDF) scheme work approved by MSEDCL.*” Therefore, the said condition does not restrict that the said experience should be or the work should have been done only with the MSEDCL. The reason behind the said condition was to carry out breakdown maintenance of HT overhead lines and underground cables, which requires expertise. It cannot be stated that by placing the said condition respondent authorities intend to bring monopoly or want to give contract to a particular contractor or section of contractors.

7 First of all, it cannot be disputed that when the tenders are issued in respect of the maintenance and carrying out the work of laying down wires, underground cables etc. by MSEDCL, it requires expertise. The expertise would then depend upon the work to be carried out. In **Vinishma Technologies Pvt. Ltd.** (supra) itself Hon’ble Supreme Court has taken note of a Three Judge Bench decision of the Hon’ble Supreme Court in **Ramana**

Dayaram Shetty vs. International Airport Authority of India [AIR 1979 SC 1628], wherein it was held that -

“Discretion of the Government in granting the largesse, is not unlimited and the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will.”

It was also observed that -

“It is well settled in law that Government must have free hand in setting the terms of the tender and the Court cannot strike down the terms of the tender prescribed by the Authority merely because it feels some other terms in the tender would have been fairer, wiser or more logical.”

This was held in **Directorate of Education vs. EDUCOMP Datamatics Ltd.** [(2004) 4 SCC 19]. Further, note also has been taken of the decision in **Icomm Tele Ltd. vs. Punjab State Water Supply and Sewerage Board** [(2019) 4 SCC 401] and **Uflex Ltd. vs. Government of Tamil Nadu** [(2022) 1 SCC 165] that a Court cannot sit over Judgment and what should be the eligibility criteria in the tender notice unless the same is arbitrary, discriminatory or actuated by *mala fides*. Here, in this case, when the eligibility criteria has been laid down in the technical qualification, the said condition has been put. That means, in order to have the project technically sound, the requirement has been placed and it is clarified that the work

experience of the bidder with other authorities would also be counted. That means, the work experience only with the MSEDCL was not the criteria, but if he would have had the experience with Government / Semi Government / autonomous body of Central or State Government etc. or even the electricity companies of other States would also been counted. Therefore, we do not find that the said condition is against the doctrine of level playing field. No case is made out for interference under our jurisdiction under Article 226 of the Constitution of India. Writ petition stands **dismissed**.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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