



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3727 OF 2026 WITH
CIVIL APPLICATION ST. NO. 10514 OF 2026

Mohsin Kayyum Shaikh

.. Petitioner

versus

The State of Maharashtra & others

.. Respondents

Mr. R. V. Gore, Advocate for the Petitioner.

Mr. V. M. Kagne, AGP for the State.

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

DATE : 8th APRIL, 2026.

PER COURT :

1. Separate application has been filed for amendment to bring subsequent events on record. Hence, allowed at the outset.
2. Present Petitioner challenges the terms and conditions of tender notice issued by Respondent Nos. 3 to 5 for auction to be held today regarding entertainment sports in Naugajibaba Urus at Vaijapur, Tq. Vaijapur, Dist. Chhatrapati Sambhajinagar.
3. Heard learned Advocate for the Petitioner. Learned AGP waives notice on behalf of Respondent Nos. 1 and 2. No necessity to issue notice to rest of the Respondents.

4. Learned Advocate for Petitioner submits that the Petitioner had submitted his bid in the last year's auction issued by Respondent No. 3 in respect of entertainment sports in Naugajibaba Urus. Petitioner was the third bidder last year. This year also he has participated in the auction scheduled on today as the tender notice was affixed on the notice board of Respondent No. 3's office on 03.04.2026. Respondent No. 3 had invited tenders without publishing the tender notice in renowned newspapers. Last year the notice was published in Daily Lokmat. Now, with an intention to give benefit to some or particular person, Clause No. 2 has been added in the tender notice. Said Clause No. 2 makes it mandatory that the bidders who have bank account should submit bank statement as on 31.03.2026 with minimum balance of Rs. 8,00,000/- and security deposit is prescribed as Rs. 2,00,000/- as compared to Rs. 25,000/- for the last year. Since these terms are with malafide intention, the bidders like Petitioner are deprived of participating in the auction process. These conditions would create monopoly or centralisation though apparently, the Municipal Council would show that it is complying with the basic requirements.

5. Learned Advocate for the Petitioner would submit that when a copy of the main petition was served on the Municipal Council, later on, Respondent No. 3 displayed on the notice board that in newspaper Daily Lokvijay dated 08.04.2026, the public notice in respect of auction was given. On the last occasion, when it was published in a renowned newspaper, Respondent No. 3 ought not to have chose the newspaper having almost few circulation. All these facts lead to the fact that Respondent No. 3 wanted to create monopoly and the action is being done with malafide intention.

6. The first and the foremost fact that is required to be considered is the law on the point governing the tender process. It appears that till we heard the matter, Petitioner had not submitted his papers and had not deposited security deposit amount. In such circumstances, when the petition is filed only on the count of malafides, then we would like to rely on the observations of Hon'ble Supreme Court in case of M/s N. G. Projects Limited vs. M/s Vinod Kumar Jain and others, **(2022) LiveLaw (SC) 302**, where it has been observed that :-

“23. In view of the above judgments of this Court, the 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. The court does

not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tenders leads to additional costs on the state and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which they present-day Governments are expected to work.”

7. We are aware of the decision in Jagdish Mandal vs. State of Orissa, **(2007) 14 SCC 517**, wherein Hon’ble Supreme Court has held that :-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality; unreasonableness, bias and malafides. 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.

Therefore, a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

8. Thus, taking into consideration the well settled law on this point, we are observing that there is limited scope for us. When it comes to levy of terms and conditions, then the authority inviting tenders would be the best authority or best party to control the terms and conditions. Merely because on the last occasion the security amount was less, the Petitioner cannot insist that this year also the

same rate should be continued. The bid amount is to be decided by the concerned authority so also the other conditions as to how much security deposit should be accepted and whether the party would then be able to pay the amount can be decided by the concerned authority, who in the present case is Respondent No. 3. Respondent No. 3 might not have displayed on the notice board the newspaper in which the publication regarding auction was given, however, that does not presume malafides on the part of Respondent No. 3. It will not be within the powers of this Court to go into the aspect as to whether the newspaper in which the notice was published had a wide circulation or not. Ultimately, in which newspaper that notice should be published is a prerogative of Respondent No. 3. Hence, we are of the opinion that this is not a fit case where we should exercise powers under Article 226 of the Constitution of India. The petition deserves to be dismissed. The same is accordingly dismissed.

(HITEN S. VENEGAVKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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