

JVS.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14393 OF 2025

Mark Enterprises	}	Petitioner
Versus		
Deputy Director (Health Services) & Ors.	}	Respondents

Mr. Samir A. Kumbhakoni, Advocate for Petitioner.

Ms. Neha S. Bhide, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for Respondent Nos. 1, 2 & 5.

**CORAM: SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

DATE: 29th APRIL 2026

P.C.:

This is a second round of litigation by the petitioner-Firm.

2. In Writ Petition No. 10712 of 2024, the petitioner came to this Court seeking a restraint order against the Deputy Director, Health Services from proceeding with the tendering process for procurement of items such as Deep Freezer and Ice Lined Refrigerator till the Court decides the validity of the specifications/conditions with respect to WHO PQS Code and Make in India preference in the tender. The said writ petition was disposed of on 12th August 2025 in view of the finalization of the tender and the execution of the contract with the respondent no. 4 in Writ Petition No.10712 of 2024. A coordinate Bench of this Court observed that no case for interference with the tender conditions was made out on account of efflux of time. However, the issue with regard to the validity of the tender conditions was kept open to be agitated if occasion so arises. The order dated 12th August 2025 observes as under: -

“4. The petitioner in response to the aforesaid notice inviting tender submitted the bid and thereafter filed this writ petition in which eligibility conditions contained in the tender have been assailed.

5. During the pendency of the instant writ petition, the contract has been executed by the proposed respondent no. 4 in respect of supply of Ice Lined Refrigerator and Deep Freezer has been supplied by another entity.

6. On account of efflux of time and in the facts and circumstances, no case for interference with the impugned tender conditions is made out. However, the issue with regard to the validity of the impugned tender conditions is kept open to be agitated, if occasion so arises.

7. With the aforesaid liberty the interim application and the writ petition are disposed of.”

3. The present writ petition concerns the modification made in clause 2.8 of the tender conditions contained in the tender notice dated 4th July 2024.

4. The learned counsel for the petitioner-Company refers to the eligibility criteria at clause 2.8 which provides that preference shall be given to Make in India products and the purchaser reserves the right to give preference to the local supplier. It was further provided that the manufacturing units in Make in Maharashtra State within India may be preferred as per the Government Resolution dated 1st December 2016.

5. The learned counsel for the petitioner-Company submits that without assigning any reason, the eligibility criteria was modified at the instance of the respondent No. 4 in Writ Petition No. 10712 of 2024 to permit supply of Deep Freezer and Ice Lined Refrigerator.

6. The decision to modify the eligibility criteria seems to have been taken in view of the modifications in the circular issued by the Government of Maharashtra. It is indicated under the column “Query and Suggestions” as under: -

“We Feel Modifications have been done to this circular and kindly recheck for the same as L+15% etc should be mentioned to take decision. This will not allow imported brands with best quality to participate and qualify for this tender. Please remove this clause so as to allow maximum companies to Participate for this Tender.”

7. The decision of the employer in the matters of tenders and contracts is a commercial decision which is not generally examined by the writ Court. The employer is the best judge of its requirements. Such decisions fall within the domain of the employer which takes such decision depending on a number of factors and circumstances. This is also well settled that the writ Court shall not interfere in a matter to examine whether the tender conditions could have been framed in a better manner or in a different manner. The High Court in exercise of jurisdiction under Article 226 of the Constitution of India shall not be entitled to re-frame or formulate the tender conditions. The modified eligibility criteria refers to larger participation in the tender process and that can be a good reason to modify the eligibility criteria.

8. In view of the aforesaid, Writ Petition No. 14393 of 2025 is dismissed.

JAYANT
VISHWANATH
SALUNKE

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[GAUTAM A ANKHAD, J.]

[CHIEF JUSTICE]