



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

WRIT PETITION NO.1788 OF 2025

PETITIONER : **Dinesh Sale Corporation,**
A proprietorship firm Through its proprietor
Mrs. Santosh Anand Baheti,
Age: 56 years, Occupation: Business
Having office at: Flat no. 101, Nabhraj Lalitya
New Osmanpura, Opposite Asian City Care
Hospital, Chhatrapati Sambhajinagar
(Aurangabad)

..VERSUS..

RESPONDENTS : 1 **Shri Vasantrao Naik Government Medical
College and Hospital, Yavatmal**
Through its Dean
having office at: Office of the Dean,
Shri V. N. Government Medical College &
Hospital, Yavatmal.

2 **The District Collector, Yavatmal,**
Office of the District Collector, Yavatmal.

3 **The Commissioner,**
The Department of Medical Education and
Ayush,
Having office at 4th Floor, St. George's
Hospital Campus, P D'Mello Road, Fort,
Mumbai.

4 **The Director of Medical Education, Research,
Directorate of Medical Education and
Research Government Dental College and
Hospital, 4th Floor, St. George's Hospital
Campus, P D'Mello Road, Fort, Mumbai.**

5 **The Additional Chief Secretary, Medical
Education and Drugs Department,**
Having Office at 9th Floor, New Mantralaya,
Gokul Tejpal Hospital Building, Lokmanaya
Tilak Marg, Mumbai.

- 6 **The Principal Secretary (Industry), Industry, Energy & Labour Department,**
Having office at Mantralaya, Madam Cama Road, Hutatma Rajguru Chowk, Mumbai.
- 7 **M/s Verdian Healthcare Pvt Ltd.,**
Through its Authorised Representative
Having Office at Khadgaon Road, Wadi, Nagpur.
- 8 **M/s New Dagdiya Medical & General Stores**
Through its Authorised Representative
Having Office at C/o. Dagdiya Hospital, Civil Lines, Washim.
- 9 **M/s Giriraj Pharma, Pusad,**
Through its Authorised Representative
Having Office at Shop No: G-6, Shri Dava Bazar, Dubewar Layout, Pusad, Yavatmal.

Shri. Amit A. Yadkikar, Adv. with Shri. K. J. Topale, Advocate for Petitioner.

Ms. Kalyani P. Marpakwar, Asst. G. P. for Respondent Nos.1 to 6/State.

Shri. C. S. Dharmadhikari, Adv. with Shri. Raghav Bhandakkar, Advocate for Respondent No.7.

Shri. H. S. Chawhan, Advocate for Respondent No.9.

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.

DATE : 10th APRIL, 2026.

ORAL JUDGMENT : (PER : ANIL S. KILOR, J.)

1. In the present writ petition, a challenge is raised to the e-tender process dated 21.01.2025 for the “Modular Blood Bank Turnkey Project”, as well as to the work order dated 20.02.2025 issued in favour of respondent No.7.

2. Brief facts of the present case are as under :

2.1. The petitioner is a proprietorship firm having experience in executing Turnkey Projects. Respondent No.1, on 08.10.2024, invited bids for procurement of Blood Bank Equipment. In the said process, the petitioner as well as respondent Nos.7, 8, and 9 participated. However, upon a complaint about fabrication of documents and other allegations, an inquiry was initiated and, consequently, the said tender process was cancelled on 13.01.2025. Thereafter, the tender in question was re-issued on 21.01.2025. A pre-bid meeting was conducted on 24.01.2025. Thereafter, technical bids were opened on 12.02.2025. In the said technical bid, all the bidders were found qualified, and accordingly, the financial bids were opened. Respondent No.7 was found to be L1 with 20% below of the estimated cost, which was Rs.4.91 crores and whereas the petitioner was found 5% below, with difference of Rs.68 lakhs. Accordingly, the work order was issued in favour of respondent No.7 on 20.02.2025.

2.2. The present petition came to be filed on 20.03.2025. When it was listed for the first time before this Court on 02.04.2025, the Court observed certain irregularities in respect of

the first tender and, considering the irregularities pointed out by the learned counsel for the petitioner regarding the second tender, this Court directed respondent Nos.3 and 4 to file their replies. Subsequent to the same, on 05.05.2025, a stay was granted to the execution of the work, until further orders and since then, the stay is operating in this petition.

3. In the above referred backdrop, we have heard Shri. Amit A. Yadkikar, learned counsel instructed by Shri. K. J. Topale, learned counsel for petitioner, Ms. Kalyani P. Marpakwar, learned Asst. Government Pleader for respondent Nos.1 to 6/State, Shri. C. S. Dharmadhikari, learned counsel with Shri. Raghav Bhandakkar, learned counsel for respondent No.7 and Shri. H. S. Chawhan, learned counsel for respondent No.9.

4. Shri Yadkikar, learned counsel for petitioner, submits that the tender was allotted to respondent No.7 in a most arbitrary manner. It is submitted that the tender conditions were deliberately tailored so as to favour respondent No.7. It is further argued that the authorities were, in collusion with respondent No.7, committed irregularities, which can be seen from the time line and the total time required to complete the said tender process. It is submitted

that at 06:06 p.m., technical bid opening summary was uploaded; at 06:09 p.m, technical evaluation summary details were uploaded; at 06:10 p.m., financial bids were opened; and at 06:21 p.m. financial bid opening summary was uploaded. It is, thus, pointed out that within a span of 15 minutes, the entire tender process was completed.

5. It is the case of the petitioner that no opportunity was given to the petitioner to look in the documents submitted by respondent Nos.7, 8, and 9 to raise its objections. It is submitted that, as per the tender schedule, the last stage contemplated was the opening of the technical bid, and no date or time was specified for the opening of the financial bids. The understanding given was that the date and time of opening of financial bid will be communicated. It is submitted that, if a period of 48 hours is provided to raise objections, there should have been a minimum time gap of 48 hours between the opening of the technical bids and the opening of the financial bids, so as to enable the bidders to go through the documents submitted by other bidders. He submitted that since, this procedure was not followed, the whole tender process is liable to be quashed and set aside.

6. The learned counsel for petitioner has drawn attention of this Court to certain documents filed alongwith the present writ petition to impress upon the Court that there was a cartel and respondent Nos.7, 8, and 9 were a part of that cartel. It is tried to be canvassed that the documents filed by these three bidders are nothing but they are the same, except for a change in the names. He has also raised a pertinent question as to how a single company could issue certificates of exclusive dealership to all three bidders simultaneously, so as to contend that the tender process was vitiated.

7. It is further submitted that since, the sufficient opportunity was not received by the petitioner to peruse the documents, the objections could not be raised and injustice has been caused to the petitioner. He, therefore, submits that the whole tender process needs to be quashed and set aside.

8. On the other hand, Ms. Kalyani P. Marpakwar, learned Asst. Government Pleader, strongly opposed the petition. She has raised preliminary objection on the ground that once the petitioner had participated, he cannot raise a challenge to the tender process, after being unsuccessful in the tender process. It is pointed out that the pre-bid meeting was held on 24.01.2025, in which the petitioner

chose to remain absent. She also denied the allegation of the petitioner that within 15 minutes, the whole process was completed and no sufficient time was provided to petitioner to look into the record and documents of other bidders.

9. It is further pointed out that the allegations of not providing Bank account details to petitioner is incorrect, for the reasons that the petitioner has regularly participated in tender floated by respondent No.1 and in many cases, he has been a successful bidder and allotted tender to him and thus, he knows very well the bank account. It is submitted that therefore, he cannot make a complaint that the bank details were not provided to him.

10. It is further denied that there was cartelization or there was any collusion of respondent authorities in awarding tender in favour of respondent No.7.

11. She, lastly, submitted that the price quoted by petitioner is more than as quoted by respondent No.7 by Rs.68 lakhs, which is a huge amount. She, accordingly, prays for dismissal of the petition.

12. Shri. Dharmadhikari, learned counsel for successful bidder, submits that in a tender process, every single day is important and since the tender relates to medical equipments, the person who is aggrieved shall be more diligent and approach at the first opportunity. He submits that in the present matter, the work order was given on 20.02.2025. Thereafter, the petitioner waited for about one month and filed present petition on 20.03.2025, and for the first time, the matter was listed before this Court on 02.04.2025. He, thus, submits that there is not only delay of one month in filing the petition but also in getting the matter listed. He submits that, by the date on which the stay was granted, i.e., 05.05.2025, respondent No.7 had completed 90% of the work and because of this petition, no payment has been made to respondent No.7.

13. He further reiterates the submission of the learned A.G.P. that once the petitioner participated in the tender process, he cannot raise a grievance after being declared as unsuccessful bidder. He, further, denied the allegation of collusion and cartelization. In support of his submissions, he has placed reliance on the following judgments of the Hon'ble Supreme Court of India and the Co-ordinate Bench of this Court :

- i) *National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd.*, reported in (2022) 6 SCC 401,
- ii) *Opaque Infrastructure Pvt. Ltd. v. Union of India*, reported in 2015 SCC OnLine Del 8396,
- iii) *Municipal Committee Katra v. Ashwani Kuma*, reported in 2024 SCC OnLine SC 840,
- iv) *N. G. Projects Ltd. v. Vinod Kumar Jain*, reported in (2022) 6 SCC 127 and
- v) *Gypsum Structural India Pvt. Ltd. v. Brihanmumbai Municipal Corporation and Others*, reported in 2023 SCC OnLine Bom 683.

14. In light of the rival submissions, we have perused the record. It is evident from the record that there is dispute about the date of opening of the technical bid and the financial bid. There is also a dispute about time. The respondents authorities have categorically denied the allegations of cartelization as well as collusion of the respondents authorities in the process to favour the petitioner.

15. The scope of judicial review can be understood from the judgment of the Co-ordinate Bench of this Court in the case of *Gypsum Structural India Pvt. Ltd.* (supra), by applying the

principles of judicial review, as given in the above referred judgment

which read thus :

"25. In tender and contractual matters, the scope of interference by courts is in a narrow compass. In examining challenge in tender matters, this court would be concerned more about adherence to the procedure. Unless arbitrariness, irrationality or bias is demonstrated, this court would not interfere in tender matters.

27. In Uflex the Apex Court has also discussed general principles on scope of judicial review in tender matters and has held in paragraph 2 and 3 as under:-

"2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "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."

In the case of *N. G. Projects Ltd.* (supra), the Hon'ble

Supreme Court has held thus :

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally

arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case.

(emphasis supplied)

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. 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."

16. Thus, as far as the allegation about cartelization and collusion, it is a matter of evidence and to establish the same evidence needs to be led.

17. Considering the scope of judicial review in commercial matter, we cannot go into the disputed question of facts.

18. In the matter at hand, the documents on which the reliance has been placed by the petitioner to show cartelization the respondent No.7 has categorically denied the said documents as of the respondent No.7. It is a specific case of respondent No.7, that the documents which are referred by petitioner as of respondent No.7, were never submitted by respondent No.7 alongwith bid

documents. Thus, in light of the above facts, it is difficult to comment upon the allegations of cartelization unless evidence is led.

19. Similar to establish the collusion, it is argued that the authorities completed the whole process within 15 minutes. However, the said fact has been denied by learned A.G.P. Thus, except words against words, there is nothing that there was any collusion.

20. Admittedly, in the present matter of the bidders, who participated, were declared as qualified including the petitioner. There is further no dispute that the price quoted by the petitioner is higher than the price quoted by respondent No.7. The difference of amount is Rs.68 lakhs in the price quoted by petitioner and the price quoted by respondent No.7. Moreover, by the time the stay was granted by this Court *vide* order dated 05.05.2025, 90% of work was already completed.

21. As regards the allegation about tailor made conditions, admittedly, the petitioner did not challenge to any of such conditions before participating in the tender by filing appropriate proceedings before the appropriate forum. The challenge raised for

the first time to the above referred effect was after, the petitioner was declared as L2.

22. Furthermore, the petitioner has not explained the delay in filing the petition. From the record, it is evident that the work order was issued on 20.02.2025, whereas the petition was filed after more than one month, i.e., on 20.03.2025. Thereafter, it appears that no efforts were taken to get the matter listed immediately before this Court. The record shows that the matter was listed first time on 02.04.2025. Therefore, in the above referred backdrop, where the petitioner not only participated in the tender process and filed petition after being declared as unsuccessful, but also filed the petition at the belated stage, after the respondent No.7 started execution of the work. Such delay makes the petitioner disentitled to claim any relief as claimed in the petition.

23. In *National High Speed Rail Corpn. Ltd.* (supra), the Hon'ble Supreme Court of India in para 41 held thus :

"41.Even otherwise, it is required to be noted that Clauses 28.1 and 42.5 of ITB were well within the knowledge of the original writ petitioner at the time of participating in the tender process. The aforesaid clauses of the ITB were put to the knowledge of all the participants/bidders and the same applied to all. Despite the above clauses in the ITB, original writ petitioner participated in the tender process. Therefore, once having accepted the terms and conditions of the tender process with the full knowledge of Clauses 28.1 and 42.5, and participated with

full knowledge, thereafter, it was not open for the original writ petitioner to make a grievance with respect to such clauses.”

In *Opaque Infrastructure Pvt. Ltd.* (supra), the Delhi High Court in para 21 of its judgment has held as under :

“21. The petitioner, being aware of the said tender conditions participated in the tender and having participated in the tender, cannot challenge or impugn the tender condition. The petitioner having participated in the tender process can only expect equality and fair treatment in the matter of evaluation of competitive bids. The petitioner cannot be permitted to challenge the terms and conditions of the tender after he had participated in the same.”

In *Municipal Committee Katra* (supra), the Hon’ble Supreme Court of India in para 21 has held thus :

“21. We feel that once the respondent-writ petitioner had participated in the tender process being fully conscious of the terms and conditions of the auction notice, he was estopped from taking a U-turn so as to question the legality or validity of the terms and conditions of the auction notice.....”

24. As regards the allegation of not granting a specific opportunity to the petitioner to peruse the record, though there may be some substance in the said submission, the same is not sufficient to quash and set aside the entire tender process, particularly when the petitioner has failed to point out any cartelization or to specify which documents filed by respondent No.7 are fabricated or not genuine. Such non grant of sufficient opportunity will amount to irregularity and the same cannot be termed as unreasonableness or arbitrariness. In absence of any arbitrariness and unreasonableness

or the process is faulty, this Court should be slow in interfering in the tender process.

25. Thus, by following the above referred principles laid down by the Hon'ble Supreme Court of India and the Co-ordinate Bench of this Court in the above referred decisions, we do not want to interfere in the present matter, accordingly it is **dismissed**. Needless to mention that the stay granted on 05.05.2025 stands vacated.

26. At this stage, learned counsel for petitioner prays for continuation of the say.

27. We are not inclined to continue the stay for the reason that in the body of the judgment, we have already observed that in such matters where it is related to health, a single day is important. In the present matter, already after completion of 90% work, 10% work is remained and for the reasons here-in-above on merits, we do not find that this is a fit case to continue the stay order further. Accordingly, such request is rejected.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)