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

WRIT PETITION NO.2321 OF 2025

NEW ELECTROPOWER ENGINEERS, THR. ITS PROPRIETOR,
KRISHNAMURARAI MISHRA

VS

U.O.I.,THR. DIRECTOR GENERAL, DEPT OF CENTRAL P.W.D., MINISTRY OF
HOUSING AND URBAN AFFAIRS AND ORS

Mr. K.S. Agrawal, Advocate for the petitioner/s
Mr. C.J. Dhumane, Advocate for the respondent nos.1 to 3
Mr. Amol Hunge, Advocate for the respondent No.4

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

DATE : **22.01.2026**

P.C.

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

3. In the present petition, a challenge is raised to the E-tender notice issued by the respondent No.3 on the ground that same is illegal and arbitrary.

4. It is the case of the petitioner that certain conditions of the tender were framed in a manner so as to render certain bidder ineligible who otherwise would have been eligible to participate in the tender.

5. It is submitted that the E-tender was issued in the month of March-2025, and the last date to upload the bid on website was 19.03.2025.

6. In the first call, the last date was 19.03.2025 for submission of the bid, whereas in second call, it was 09.04.2025.

7. It is argued that in the first call, there was time limit of 10 days prescribed to submit the copy of MoU with associate agencies, which was not prescribed in the second call.

8. It is submitted that therefore, on 09.04.2025 a protest was registered by the petitioner. He submits that certain conditions are contrary to the SOP and works manual.

9. The learned counsel for the petitioner fairly admits that after the protest letter submitted on 09.04.2025, he participated in the tender process but could not succeed.

10. On the other hand, the learned counsel for the respondent Nos.1 to 3 points out that with similar conditions the tender was floated prior to the tender under challenge and in the said tender process, the petitioner participated and succeeded in getting the work.

11. It is pointed out that since in the earlier tender process, the petitioner succeeded, he did not object to the similar conditions. Whereas, this time since he failed to get the tender work, the challenge came to be raised. He submits that once the petitioner participated in the tender process, the Principle of Estoppel will apply.

12. In light of the rival submissions, we have perused the record.

13. Undisputedly, in the matter at hand, there is no challenge to the work order issued in the name of the respondent No.4. A challenge raised in this petition is only restricted to the e-tender process on the ground that certain conditions were contrary to the CPWD Works Manual-2024 and SOP. Further, no time was prescribed in submission of the copy of the MoU for willingness of the associate agencies after the award of work.

14. It is an admitted fact that though the petitioner submitted the letter of protest on 09.04.2025, i.e. on the last date for submission of the tender documents, raising a challenge to the conditions of tender, he participated in the process.

15. Thus, it is evident that though there was sufficient time available after publication of the tender notice, the petitioner did not raise any grievance or did not challenge the tender notice by filing appropriate proceedings before the appropriate forum. However, after participation, and when the petitioner failed to get the work, the present petition came to be filed.

16. The Hon'ble Supreme Court of India in the case of *Manish Kumar Shahi v. State of Bihar*, reported in (2010) 12 SCC 576, has observed thus:

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

17. There is no doubt as pointed out by the learned counsel for the petitioner that in the case of *Meeta Sahai ..v.. State of Bihar*, reported in (2019) 20 SCC 17, the Hon'ble Supreme Court of India has observed that the Court must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.

18. There is no dispute about the above referred settled law. However, the distributing factor in this petition is that in earlier tender process with the similar conditions, the petitioner without raising any objection to any of the conditions participated and succeeded in getting work.

19. This fact has been brought on record by the respondents vide their reply on affidavit dated 20.06.2025, which was received by the petitioner on the same day. After this, the petitioner filed a rejoinder on 04.09.2025. However, the above referred statement made by the respondent No.3 in paragraph 6 of the reply dated 20.06.2025, has not been countered by the petitioner.

20. In the circumstances, it is apparent that the petitioner, having participated in the tender process conducted pursuant to the impugned e-tender notice took chances and when it was realized that he would not succeed, an objection was raised, and the present petition came to be filed only after it was confirmed that the tender had not been allotted to the petitioner.

21. Such practice is nothing but misuse of process of law. Hence, considering the conduct of the petitioner that in earlier tender process, he did not raise any objection and did not challenge the similar conditions, as he got the work in his favour, we are not inclined to exercise our discretionary powers.

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Accordingly, the writ petition is **dismissed**.

Rule stands discharged. No order as to costs.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)