

(2025) 07 BOM CK 0283

In the Bombay High Court, Nagpur Bench

Case No : Writ Petition No. 3997 Of 2024

M/S Aditya Construction Company (J.V.), Nagpur Thr.
Authorised Signatory, Mr. Nilesh R. Borekar

APPELLANT

Vs

State Of Maharashtra, Thr. Secretary, Public Works
Department, Mumbai And Others

RESPONDENT

Date of Decision : 25-07-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Contract Act, 1872 — Section 20
Companies Act, 2013 — Section 8

Citation : (2025) 07 BOM CK 0283

Hon'ble Judges : M. S. Jawalkar, J;Pravin S. Patil, J

Bench : Division Bench

Advocate : Dr. Abhinav Chandrachud, Pankaj Sutar, Sanket Bhandarkar, Yash Pandya, D.V.Chauhan, P.P.Pendke, A.D.Chaudhari, H.D.Dangre, Nikhil Kirtane

Final Decision : Dismissed

Judgement

M. S. Jawalkar, J

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.
3. The petitioner is the Joint Venture of Aditya Construction Company, D.Thakkar Construction Private Limited and Sunny Infraproject Private Limited. All the Joint Venture partners are Government contractors and are engaged in the business of construction, work contracts and other allied activities. It is contention of the petitioner that they have successfully completed various works floated by the Government under different tenders. The respondent No.1 is the State of Maharashtra and respondent Nos.2 to 5 are the officers of the State Government. The respondent Nos.6 and 7 are bidders, who had participated in the tender floated by respondent No.4 i.e. Executive Engineer, Public Works Division No.3,

Nagpur.

4. On 13/03/2024, the respondent No.4 floated tender bearing Tender ID 2024_PWR_1033448_1 for development of Ambhora Tourism Place, which included tourist facilities, temple development and beautification work at Ambhora, Tahsil Kuhi, District Nagpur. The tender was percentage rate tender and the estimated cost as per the respondent No.4 is Rs.115,90,98,082/-. The time for completion of the work floated under the aforesaid tender is 24 months. The online bid submission for the said tender started from 13/03/2024 and the last date for bid submission was 04/04/2024, which was later on extended to 08/04/2024. The petitioner submitted its bid for the said tender on 08/04/2024 (Annexure-2). Apart from the petitioner, the respondent Nos.6 and 7 had also participated in the aforesaid tender.

5. The petitioner received communication dated 25/04/2024 (Annexure-3) from the respondent No.4 pointing out some shortfalls in the technical bid submitted by the petitioner. As petitioner was concerned with civil work only, following shortfalls, which were noticed, were informed to the petitioner.

(1) Scanned from original copy of forwarding letter in which it is clearly mentioned that the offer in envelop No.1 & 2 does not contain any condition, deviation from terms and conditions stipulated in the tender is not uploaded.

(2) Scanned from original copy of declaration of royalty charges as per proforma given in tender is not uploaded.

(3) Scanned from original copy of declaration of Contractor as per proforma given in tender is not uploaded.

(4) Scanned from original copy of QR based technical personnel deployment statement as per requirement of technical staff given in tender is not uploaded.

(5) Scanned from original copy of certificate of satisfactorily executed in any one year, during last Five year minimum quantities of Civil work. a) Red Sand Stone/ Yellow sad stone/basalt Stone/Marble Stone 130 Cum.

6. The petitioner vide communication dated 27/04/2024 (Annexure-4) submitted its explanation along with relevant documents to the respondent No.4. The petitioner submitted that vide communication dated 09/05/2024 (Annexure-8), it has informed to the respondent No.4 that in certificate dated 26/04/2024 issued by the Executive Engineer, Dhantoli Zone, NMC, Nagpur, there is a typographical mistake in Item No.4. The petitioner had carried out Coursed Rubble Masonry (Basalt Stone Work), however, inadvertently, in the certificate, the same was shown as UCR Masonry (Basalt Stone Work). The petitioner had also forwarded letter of Executive Engineer, dated 07/05/2024 (Annexure-7), wherein it is clearly stated that there is typographical mistake in certificate dated 26/04/2024 and instead of UCR Masonry work, which should be CR Masonry Work. By these letters, it was informed by the petitioner that there is error in the certificate issued by the Nagpur Municipal Corporation instead of CR Masonry (Basalt Stone

Work), it was wrongly mentioned as UCR Masonry (Basalt Stone Work). The Executive Engineer, Dhantoli Zone, NMC, Nagpur has also informed to the respondent No.4 about its typing error in the said certificate.

7. On 15/05/2024, the respondent No.4 has supplied the technical bids submitted by the other bidders. The petitioner on 17/05/2024 has submitted its objection to the respondent No.4 with regard to the technical bid submitted by the other bidders. The said objection is annexed as Annexure-10. The first objection is with regard to the share of the partner M/s.Shakti Buildcon is 49%, which is not as per the proportion of his average annual turnover. It is more than his allowed percentage as per tender condition. Hence, Joint Venture Agreement is not valid and shall be disqualified (Clause 4.3 sub-clause (6) of Section 1 ITP). Second objection of the petitioner is that the quantity of stone work executed is 9772 sq.mtrs. and 15 cms. thick which seems to be cladding/facial stone quantity. This executed quantity is not acceptable as per tender condition. The quantity and item executed shall be checked from original item in BOQ of the work for which it was executed. Also the expert opinion of the appointed Architect for this tender work shall be taken. Again the quantity executed is in Joint Venture. Hence, share of the partner in Joint Venture (M/s. Super Acme Build Private Limited 25%) shall be considered and disqualified.

8. It is submitted by the petitioner that in view of objection as regards the experience certificate submitted by the respondent No.7, the respondent No.7 has submitted another certificate dated 07/04/2024 (Annexure-11) along with work order dated 03/04/2023 (Page-834), issued by Shree Siddhivinayak Seva Trust to show that it had carried out work of Red Sand Stone Block Masonry to the tune of 276.25 Cum. The petitioner objected the said certificate vide its letter dated 27/06/2024 (Annexure-12) to the respondent No.4. The technical bids of the bidders were evaluated on 01/07/2024 and in the said evaluation, the petitioner was declared disqualified. Being aggrieved by the said disqualification in technical evaluation, the present petition is filed on the ground that rejection of the technical bid is perverse against the documents and record.

9. It is contended that the State cannot act arbitrarily in the matter of entering into relationship being contractual or otherwise with a third party and its action must conform to some standard or norm, which is in itself rational and non-discriminatory. It is further contention of the petitioner that the arbitrary manner in which the technical bid of the petitioner has been rejected by the respondent No.4 is violative of Article 14 of the Constitution of India and it is liable to be set aside. Every action of the State Executive Authority must be subjected to Rule of Law and must be informed by reason. As there is no reason to reject the technical bid of the petitioner, the action of the respondent No.4 is liable to be quashed and set aside.

10. The finding to the effect that the petitioner has not executed minimum quantities of work pertaining to Red Sand Stone/Yellow Sand Stone/Basalt Stone and Marble Stone is perverse and without application of mind. It is contention of

the petitioner that they have carried out work much more than what is specified in Clause 4.4.1(c) of the tender document. In support of this contention, the petitioner placed on record experience certificate issued by the Executive Engineer, Nagpur Municipal Corporation, Nagpur. The petitioner is carried out Basalt Stone Work to the tune of 3649.94 Cum, which is much higher than the minimum quantities specified in the tender document. The respondent No.4 has ignored the aforesaid certificate on the ground that the petitioner has submitted different certificate for the same work. There was typographical mistake in the certificate dated 26/04/2024, therefore, another certificate came to be issued. If there was any doubt to respondent No.4, it is contended that he ought to have verified the said fact from the concerned Authority, instead of rejecting the technical bid of the petitioner. It is also contention of the petitioner that the tender condition do not specify the experience should be in respect of Uncoursed Rubble Masonry (UCR) or Coursed Rubble (CR) Masonry, then it does not permit the Technical Evaluation Committee to make such distinction, which is contrary to the tender conditions. When the Executive Engineer vide its communication dated 07/05/2024 informed to the respondent No.4 that there was a typographical error in Item No.4 of the certificate and the item therein is CR Masonry and not UCR Masonry. The lead Joint Venture partner of petitioner carried out the work in respect of CR Masonry Work (Basalt Stone), which was supported by Laboratory Reports. It is denied by the petitioner that they have made any false representation or misleading statement while submitting the bid.

11. Another ground for rejection of the technical bid is that the petitioner is in habit of filing litigation. By taking such stance, the respondent No.4 is indirectly trying to curtail the power of judicial review. The petitioner has right to approach this Court for redressal of its grievance. There is no such finding in any of the litigation that petitioner has involved in unwarranted litigation. The non-submission of HVAC Expert is also incorrect and it was submitted along with bid document. It is contention of the petitioner that respondent No.7 is not technically qualified for the tender in question, however, he was declared to be technically qualified, which clearly showed that the Tendering Authority is hand-in-gloves with the respondent No.7.

12. It is further submission of the petitioner that the experience certificate dated 07/04/2024 cannot be relied upon as it was issued on Sunday by the Trustee, who has no knowledge of technical know how of the work done, still it was accepted by the respondent Nos.4 and 5. In view of this submission, the petitioner prayed for declaration that he is technically qualified to participate in the tender process referred above and allow the petitioner to participate in the tender process. The petitioner further prayed for declaration that respondent No.7 is not technically qualified to participate in the tender process.

13. Per contra, respondent Nos.1 to 4 submitted that the communication dated 25/04/2024 was sent by the respondent No.4 to the petitioner stating discrepancies in the technical bid and the petitioner was granted time to submit

its explanation. The petitioner submitted incorrect information and documents and thus the explanation submitted by the petitioner was rejected and it was disqualified. It is contention of the respondent Nos.1 to 4 that the technical bid submitted by the bidders were not visible on portal and the same became visible only after uploading of evaluation of technical bid. All the information regarding the same was made available offline in the office of respondent No.4. Thus, the information sought by the petitioner was made available by the respondent No.4. It is contention of respondent Nos.1 to 4 that the petitioner had submitted misleading and incorrect documents so as to qualify in the technical bid. The petitioner submitted three different certificates regarding the same work, which were eventually rejected and the petitioner was disqualified.

14. Clause 4.7 in the tender document clearly states that even though the bidders fulfilled above qualifying criteria, they are subjected to be disqualified if they have –

- (i) Made misleading or false representation in the forms, statements and attachments submitted in proof of the qualification requirements, and/or
- (ii) Record of poor performance such as abandoning the works, not properly completing the contract, inordinate delay in completion, litigation history, or financial failures etc.; and /or
- (iii) Participated in the previous bidding for the same work and had quoted unreasonably high bid prices and would not furnish rational justification to the employer.

As petitioner submitted three different quantity certificates, which are contradictory to each other in respect of the one and the same work, the petitioner has attracted first part of provisions of clause 4.7 of the tender clause. The objection raised by the petitioner against the respondent No.1 in respect of the certificate and the work order issued by the respondent No.8 was considered. Accordingly, the enquiries were made and after the certificate issued by the respondent No.8, was found to be correct, and thus the respondent No.7 was qualified for the technical bid. The respondent Nos.1 to 4 submitted that the decision was taken as per the prescribed norms and allegation as regards the bias is not correct. The tender clause regarding qualifying criteria is as per clause 4.4 of the tender document. Clause 4.4. of the tender document is reproduced below:

"4.4. A. To qualify for award of the contract, each bidder in its name should have in as referred to in Appendix.

1. For Civil Work :-

- (a) Achieved a Maximum annual financial turnover in an one year during last five years not less than Rs.4022.65 lakhs (in all classes of Civil Engineering Construction works only amount indicated in Appendix).

(b) Experience in successfully completed Three(3) Similar work i.e. construction of original Building work each work value not less than Rs.4284.15 lakhs updated to current cost within the last five years. (40% of Tender cost)

Or

Experience in successfully completed Two (2) Similar work i.e. construction of original Building work, each work value not less than Rs.5355.19 lakhs updated to current cost within the last five years. (50% of Tender cost)

Or

Experience in successfully completed One (1) Similar work i.e. construction of original Building work, value not less than Rs.8568.30 lakhs updated to current cost within the last five years. (80% of Tender cost)"

As per the criteria mentioned in clause 4.4, the petitioner had submitted three different certificates dated 14/09/2021, 17/05/2023 and 05/03/2024 (Annexures R-III, R-IV & R-V) respectively. The latest certificate dated 05/03/2024 shows that the amount of work executed was for Rs.85,95,62,772/-. The requirement of amount as per clause 4.4 of the tender document is Rs.8568.30 lakhs, hence, the petitioner was earlier considered to satisfy this particular condition.

15. However, on perusal of the certificate dated 14/09/2021, it was observed that there was a note under the certificate mentioning that "work amounting to Rs.38,50,42,904/- has been executed by M/s.D. Thakkar Constructions Pvt. Ltd. through nominated sub-contractor M/s. Drishti Structural Engineering Pvt. Ltd. approved by NMRDA". Thus, it reveals that the said could reduce the amount of completion of work to be certified between the concern partners of M/s. Aditya Construction (JV). In view thereof, on 16/07/2024, a communication was issued to NMRDA, Nagpur for clarification (Annexure-R-VI). In response to the said communication, the NMRDA on 18/07/2024 (Annexure-R-VII), issued communication/certificate showing the value of work done by M/s. D. Thakkar Construction Private Limited, who is one of the partners of M/s.Aditya Construction Company (JV). Thus, from the said communication, it reveals that the amount of completion of work creditable to M/s.D. Thakkar Construction Private Limited works out from the year 2018-19 to 2024 amounting to Rs.25,63,98,461/-. Thus, amount of completion of work of M/s.Aditya Construction Company (JV) does not qualify and the amount of completion of work of M/s. D.Thakkar Construction Private Limited who is a partner of M/s. Aditya Construction Company (JV) is only Rs.38,48,66,022.69, which is short by Rs.47,19,63,977.31 for the qualifying amount of prescribed criteria.

16. It is submitted that this fact could not be pointed out at the time of scrutiny, as the petitioner submitted three completion certificates with respect to the same work and he has purposefully suppressed the note from the earlier certificate while submitting latest certificate to gain undue advantage, which amounts to submission of misleading information or misrepresentation of documents. Thus,

it is a shortfall in the technical bid of the petitioner and accordingly he was disqualified. It is further submitted that the petitioner is also not qualified, as the petitioner has not done one similar type of work, two similar type of work and also three similar type of work as per documents submitted by the petitioner. Accordingly, the petitioner is disqualified. It is pointed out that earlier there was tender allotted to the petitioner in respect of a construction of bridge near Koradi-Navegaon-Ghord vide order dated 31/01/2017. However, there was serious incident of collapsing of bridge slab deck as contractor failed to inform the concerned engineer about the start of concrete work on the bridge slab deck. Accordingly, the petitioner has been blacklisted on 19/09/2024. It is also pointed out that in respect of tender construction of Priyadarshini Hostel allotted to the petitioner was cancelled under Clause 3C of the tender document, due to the contractors failure to maintain the required pace of work as per the agreement, it was decided to terminate the contract under Clause 3C of the agreement. It also appears that the tender was allotted to the petitioner in respect of work "Construction of Cement Concrete Road from Zingabai Takli to Godhani (Rly) Bokara Koradi Road", which was cancelled due to less payment of additional security deposit by the contractor and work was awarded to other contractor. The petitioner challenged the same in Writ Petition No.7314 of 2018 against the State Government, however, same was dismissed by this Court vide order dated 07/03/2019. All these documents are placed on record by the respondents-Authorities.

17. The respondent No.7 to whom work was allotted filed its reply. The reply is relevant only for the purposes of objections raised by the petitioner against this respondent for accepting his technical bid on 16/05/2024. So far as objection to the work done by the respondent No.7 for Shri Siddhivinayak Sewa Trust (respondent No.8), the respondent No.7 additionally submitted a certificate with respect to stone work of 9772 sq.mtrs. i.e. 1465 Cum. The said work was pertaining to cladding of wall, therefore, the respondent No.4 had issued a letter dated 20/05/2024 calling upon respondent No.7 to clarify as to whether the certificate was pertaining to stone cladding or stone masonry. As the work was pertaining to stone cladding, the respondent No.7 submitted the quantity certificate dated 07/04/2024 issued by respondent No.8-Shri Siddhivinayak Sewa Trust, Zilpi Lake, Hingna, Nagpur, which shows that the respondent No.7 has executed red sand stone block masonry work of 276.25 Cum. The work order in the said matter was issued on 03/04/2023 to the respondent No.7. The total quantity of work in red sand stone was to the extent of 320 Cum. The quantity of work executed in the year 2023-24 is 276.25 Cum. Thus, the respondent No.7 submits that he satisfied the eligibility criteria prescribed in item No.5 of Clause 4.4A.1(c), which requires minimum quantity of 130.00 Cum. It is submitted that there is a specific objection to the certificate issued by the respondent No.8, the petitioner only requested the respondent No.4 to verify whether the work is executed by the respondent No.7 as stated in the quantity certificate dated 07/04/2024. The Authorities have verified all the facts and have rightly held that

respondent No.7 fulfills the eligibility criteria prescribed under the aforesaid clause. So far as the objection in regard to the issuance of certificate on Sunday is concerned, it is the contention of the respondent No.7 that the respondent No.8 is not a Government or Semi Government organization. It is company registered under section 8 of the Companies Act.

18. It was pointed out that the petitioner submitted three different certificates dated 10/11/2023, 28/03/2024 and 26/04/2024 with the tender. Whereas certificate dated 26/04/2024 was filed in response to the shortfall notice dated 25/04/2024. The certificates have been rightly discarded by the respondents-Authorities during the course of technical evaluation. There are discrepancies in the nature of work and difference in quantity in all three certificates. There is difference in quantities in RCC pipe. So also, 'Reusing for Ashlar' in certificate dated 26/04/2024 'Basalt Stone Work' words are added. There is difference in quantities in respect of M35 concrete. The variation in the contents of the certificates are glaring. It is contended by the respondent No.7 that even if it is assumed that the alleged certificates issued by the Nagpur Municipal Corporation in favour of the petitioner are genuine and correct, it is submitted that even then the petitioner does not satisfy the condition of eligibility provided under Entry No.5 of Clause 4.4A.1(c). This clause is required to be read along with the technical specifications prescribed in Section 5 of the tender.

19. Perusal of the certificates issued by NMRDA dated 05/03/2024 would indicate that total value of work executed is Rs.85,95,25,62,772/- and the work amounting to Rs.38,50,42,904/-was executed by the sub-contractor M/s.Drishti Structural Engineering Pvt. Ltd. The allotment of work to the sub-contractor by M/s.D. Thakkar Constructions Pvt.Ltd. was approved by NMRDA. The tender specifically provides that experience and resources of a sub-contractor shall not be taken into consideration. Thus, the value of the work executed by M/s.D.Thakkar Constructions Pvt. Ltd. comes to Rs.47,45,19,868/-, which is more than 40% of work of similar nature and less than 50% of work of similar nature. Even in respect of certificate issued by NMRDA regarding construction of RTO (East) building cannot be taken into consideration, as it is less than 40% of the tender value. In view of all these submissions, it is submitted that the petitioner does not satisfy the eligibility criteria under Clause 4.4A.1(a), Entry No.5, so also 4.4A.1(c) Entry No.5. Hence, technical bid of the petitioner is rightly rejected.

20. So far as objection No.1 raised on behalf of the petitioner is concerned, no argument advanced. However, the respondent No.7 drawn our attention to page-55 of the petition, in Clause 2-C, 4.6, formula is given to calculate the bid capacity = $(A \times N \times 2) - B$.

A = Maximum Annual Turnover in all type of civil engineering works during last five years.

N = stand for Number of years prescribed for completion of the work for which bids are invited.

B = stand for Value of existing commitments and ongoing works in hand leading the period of work into consideration.

Thus, so far as objection in this regard is having no substance. As defined and as per those calculations, the bid capacity of respondent No.7 is fixed.

21. The respondent No.8 also filed its reply and placed on record work order. It is submitted that on perusal of the said work order, it reveals that the respondent No.7 is having eligibility as per the tender and specifications therein, issued by the respondent No.4.

22. In rejoinder, the learned counsel for the petitioner submitted that in measurement book pertaining to 2nd RA bill, item No.26, 7th RA bill, item No.29 and similarly 10th RA bill, item No.26, so far as the work executed by sub-contractor is concerned, it is submitted that it is carried out on behalf of the contractor, a sub-contract is a part of the works contract and is not an independent work by itself. Therefore, the sub-contractor cannot claim the experience in respect of the work, which he has executed on behalf of the prime contractor. The sub-contractor is not liable to the contractee inasmuch as, he has undertaken the execution of part of the work contract not from the contractee, but from the prime contractor. The role of sub-contractor is simply that of an agent of the contractor. It is submitted that in the present case, the principal is M/s.D. Thakkar Constructions Pvt.Ltd., who is one of the joint venture partners of the petitioner and the sub-contractor i.e. Drishti Structural Engineering Pvt.Ltd., who is an agent of M/s.D.Thakkar Constructions Pvt.Ltd. Though the experience of the agent for carrying out the work on behalf of his principal, will be attributed to the principal, as the principal is liable for the acts done by the agent. It is contention of the petitioner that the respondent Nos.1 to 4 ought to have called for certificate of the concerned Architect in respect of certificate dated 07/04/2024 asking whether the work has been carried out or not, whether it is red sand stone or not, the balance-sheet, account statement to check whether the respondent No.7 has received payments for the aforesaid work, to call for GST returns, toll tax receipts pertaining to transport of red sand stone. In absence of this, it cannot be said that the respondent Nos.1 to 4 have carried out detailed enquiry pertaining to the aforesaid certificate. It is submitted that the respondent Nos.1 to 4 and their political master did not like the fact that the petitioner had participated in the aforesaid tender process, as they had already decided as to whom they wanted to award the contract.

23. The learned GP vehemently objected to this vague allegations of "political master" without referring to any specific incident of control of any political figure to the respondent Nos.1 to 4.

24. The learned GP for the respondents-Authorities relied on Federation of Railway Officers Association and others v. Union of India, (2003) 4 SCC 289, wherein Hon'ble Apex Court in para-20 held as under:

"20. Allegations regarding mala fides cannot be vaguely made and it

must be specific and clear. In this context, the Minister concerned who is stated to be involved in the formation of the new zone at Hajipur is not a party who can meet the allegations.

The learned GP also placed reliance on *Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd.*, (2005) 7 SCC 764, wherein also held that -

"56. Exercise of extraordinary power in exceptional circumstances under Standing Order 20(vi) in the circumstances, cannot be said to be arbitrary, unreasonable or mala fide. It is settled law the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (vide *E.P. Royappa v. State of T.N.* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra* [(1976) 1 SCC 800] (SCC p.802, para 2): "It (mala fide) is the last refuge of a losing litigant."

25. Similar view is also taken in the case of *Mutha Associates and others v. State of Maharashtra*, (2013) 14 SCC 304. In para-42 of the decision, the Hon'ble Apex Court observed as under:

"42. Equally well settled is the principle that the burden to establish that the action under challenge was indeed mala fide rests heavily upon the person making the charge; which is taken as quasi-criminal in nature and can lead to adverse consequence for the person who is proved to have acted mala fide. There is in fact a presumption that the public authority acted bona fide and in good faith. That presumption can no doubt be rebutted by the person making the charge but only on cogent and satisfactory proof whether direct or circumstantial or on admitted facts that may support an inference that the action lacked bona fides and was for that reason vitiated. The third principle equally sanctified by judicial pronouncements is that the person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against him."

It is contention of the petitioner that political master control the respondents Authority, but the petitioner has not given specific name of the political master, who is controlling the Authority nor any date, time and place etc. The learned GP has rightly placed the above reliance on behalf of the respondents-Authorities.

26. The respondent Nos.1 to 4 placed on record additional affidavit, wherein it is made clear that to maintain the transparency in decision making process, the evaluation-sheet of all the bidders was supported by Office Note and was uploaded on the website. The reasons for rejecting the bid of the petitioner are shown at documents submitted by the petitioner to justify its technical competence were considered. Though those documents were in terms of Clause 4.4 of the bid document, when there was communication that the petitioner had

not submitted scanned from original copy of the certificate, having satisfactorily executed in any one year or during last five years minimum quantities of the items as mentioned in Clause 4.4(1)(c)(5). Therefore, it was expected from the petitioner to supply appropriate documents, which would have demonstrated that the petitioner had handled the quantity/amount of items, which are referred in Clause 4.4(1)(c)(5). If the certificates are compared, it would show that the certificate dated 10/11/2023 at item No.5, item handled was stated as "CR Masonry" with a quantity of 234.498 for the financial year 2023-24 and whereas in certificate dated 28/03/2024, item No.4 is under the name as "UCR Masonry", which is for the quantity 3649.94 for the financial year 2023-24. The term 'UCR' stands for 'Uncoursed Rubble Masonry' and whereas the term 'CR' would stand for 'Coursed Masonry'. Both these works are totally different. There is further addition of "Basalt". Whereas same document and constant change of stand by the petitioner made the Tendering Authority disqualify the petitioner in terms of Clause 4.7, which permitted rejection/ disqualification. Thus, nothing arbitrary was, therefore, in the conduct of the answering respondents while disallowing the bid of the petitioner. The respondents-Authorities also approached to the NMC, whereas, it received a third certificate dated 26/04/2024 and sought clarification from the said Authority regarding item 19, which was titled as "Reusing for Ashlar (Basalt Stone Work)", which reference was never made in previous certificates. The said Authority responded on 02/05/2024. However, instead of responding to the clarification sought about clause 19, intimated the answering respondents that the petitioner had handled "Coursed Rubble Masonry" for a certain quantity. As no proper clarification from the NMC, creating further confusion about the nature of work undertaken by the petitioner for which it was claiming experience. The said communication issued by NMC is placed on record by the respondent Nos.1 to 4.

27. It is further contention that considering the previous work experience relied upon by the petitioner, it was not complying with the requirement of Clause 4.7. The said clause permitted disqualification even if the bidder is meeting the qualifying criteria, in case, there is record of poor performance, such as abiding works not properly completing contract, inordinate delay in completion of work, litigation history, or financial failures. It is submitted that the bid document of the petitioner submitted to support its past experience, on perusal, clearly reflects that there was inordinate delay in completion of previous works, which were handled by the petitioner and many of the works remained incomplete. The litigation history also shows that the petitioner was entangled in as many as 38 litigation as per the information submitted by the petitioner himself along with the bid. The respondents placed on record chart showing certification of works at page-1110, which showed that works allotted to the petitioner-Company in the year 2017-18, which was to be completed within 12 months, was incomplete at the time of submission of the bid, i.e. by May, 2022.

28. It is the contention of the petitioner that so far as item Nos.3 and 7 of the Note below Clause 4.6 of tender document as also in Clause 4.7, are concerned,

the balance amount of work 0:0 however, it was shown as work in progress. As such, the overall performance of the contractor showed that it was not satisfactory is incorrect.

29. If the tender document is perused, it is called for the purpose of development of Ambhora Tourism place in which included Tourist Facility, Temple Development and Beautification Work, Ambhora, Tahsil Kuhi, District Nagpur. The terms and conditions in the said document (Annexure-1, Page 32), are fixed as per wishes of the employer. Purpose of terms and conditions is the search of every employer so that suitable person/partner be there to execute the said project. The most important is object and purpose of the tender. As amount of Rs.115 Crores and above is involved, it is the employer to ensure the best partner. There is tendering procedure given in details under the caption "Instructions to Bidder" and under caption "General" therein Clause 4.2 provides for information and document to be included by the every bidder with their bids. Wherein, 4.2(b) provides for bidders to supply total monetary value of construction work performed for each of the last five years. The relevant clauses of 4.2 are as under:

"4. Qualification of the Bidder

4.1

4.2 All bidders shall include the following information and documents with their bids in Section 2.

(a)

(b) Total monetary value of construction work performed for each of the last five years ;

(c) Experience in works of a similar nature and size for each of the last five years and details of works underway or contractually committed and clients who may be contacted for further information on those contracts ;

(d)....

(j) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned and disputed amount;

(k)...

(l) The proposed methodology and program of construction, backed with equipment planning and deployment, duly supported with broad calculations and quality control procedures proposed to be adopted, justifying their capability of execution and completion of the work as per technical specifications within the stipulated period of completion as permilestone;

(m)...

(n) Scanned from original copy of affidavit regarding completeness, correctness

and truthfulness of documents submitted on Stamp paper Rs.500/- as per prescribed given in Appendix-II.

Clause 4.3 provides for Bids from Joint ventures are acceptable but not for or with the Electrical Contractor. The relevant sub-clauses are as under:

4. The JV shall nominate one lead partner who is registered in highest class / highest average annual turnover in last 5 years certified by C.A. with UDIN and date as contractor amongst the partners of JV, and whose share in the partnership shall not be less than 51% in the JV.

5. No partner in the JV shall have a share less than 20% in the JV.

9. The qualification regarding similar type of work and items of important works can be fulfilled by any partner of the JV.

Clause 4.4 A. provides for To qualify for award of the contract, each bidder in its name should have in as referred to in Appendix.

1. For Civil Work :-

(a) Achieved a Maximum annual financial turnover in any one year during last five years not less than Rs.4022.65 lakhs (in all classes of civil engineering construction works only) amount indicated in Appendix

(b)

Or

.....

Or

Experience in successfully completed One (1) Similar work i.e. construction of original Building work, value not less than Rs.8568.30 lakhs updated to current cost within the last five years. (80% of Tender cost)

(c) Executed in continuous twelve calendar months (during the last five years), the minimum quantities of the following items of work as indicated in Appendix.

S. No.

Item of work

Quantity/ Amount

Unit

1

....

2

...

3

...

4

...

5

Red Sand Stone/Yellow sand stone / basalt Stone / Marble Stone

130.00

Cum

6

....

The note below chart provides that -

The works may have been executed by the Applicant as prime contractor or as a member of joint venture.

In case a project has been executed by a joint venture, weightage towards experience of the project would be given to each joint venture in proportion to their participation in the joint venture.

4.5 Sub-contractors' experience and resources shall not be taken into account in determining the bidder's compliance with the qualifying criteria except to the extent stated in 4.5 (A) above.

Note below 4.6 at page-56 of the petition reads as under:

1.

2.

3. It is compulsory to submit correct and complete information of works in hand along with the work in which he is declared as L1 and also the information of new works allotted to the bidder after submission of bid for this work but before final decision is taken otherwise the bidder will be liable for action as per rule.

4.

5.

6.

7. Even though the bidders meet the above qualifying criteria, they are subjected to be disqualified if they have

(a) Made misleading or false representation in the forms statement and

attachments submitted as proof of the qualification requirements and / or

(b) Record of past performance such as abandoning the works, not properly completing the contract, inordinate delays in completion litigation history or financial failures etc and /or

(c) Participated in the previous bidding for the same work and had quoted reasonably high bid prices and could not furnish rational justification to the employer.”

Similar provision is provided in clause 4.7.

30. As such, there is clear warning in the tender document itself that even though the bidder meet the above qualifying criteria, they are subject to disqualify for the reasons mentioned in clause 4.7 at page-57.

31. There is no challenge to this absolute right. After participating tender process, the petitioner cannot challenge this condition. The utmost important is the public purpose and public money. All this information is required to be submitted along with affidavit. It is not the only formality, but it create trust that contains in Envelop-1 and other documents pertaining to the tender submitted by the bidder are correct and no misleading statement is there. If such document or incorrect information pertaining to the documents is to be found, the bidder is liable for penal action. Thus, there is no substance in the contention of the petitioner that information submitted by the contractor needs to be taken into account. Secondly, details specifications are provided regarding objection that there was no mention in Clause 4.4(1)(c)(5), that it will include work of quarrying, loading, transportation, etc. However, it is a duty of the bidder to go through the specifications appended to the tender document.

32. If clauses 334, 335 and 336 (Page-262-263) of Section 5 Technical Specifications are perused, it includes transportation, loading and unloading, stacking, scaffolding, cleaning, fixing, joint filling, polishing, necessary lifting machinery, placing, etc. These details are given specifications of the type of work, the bidder shall require to perform. Similar details are given in respect of sand stone at Sr.No.345 (Page-471) and red sand stone at Sr.No.340 (Page-264).

33. It is the contention of the petitioner that no opportunity was granted to the petitioner by the respondents-Authorities to comply the deficiencies. In fact, due opportunity was granted to the petitioner to fulfill the deficiencies. The shortfalls in the first envelop when informed to the respective bidder vide its letter dated 25/04/2024, it was pointed out that 'As per qualifying criteria, the bidders were required to submit the quantity certificate showing execution of minimum 130 Cum of quantity of red sand stone / yellow sand stone / basalt stone / marble stone'. There are around seven shortfalls of which compliance was asked for. It is observed that on perusal of the quantity certificate issued by EE-NMC as mentioned in the reference No.4 above, has mention at Sr.No.19, the item regarding "Reusing of Ashlar" (Basalt Stone Work) with quantity of 228.56 Cum.

The work for which the said quantity certificate issued was pertaining to "Strengthening, Improvement and Beautification of Gandhi Sagar Lake at Nagpur". This clearly indicates that the Aditya Construction has reused the already available stones of required size for construction of stone masonry, which does not satisfy the scope of work as mentioned at Sr.No.i to iv as above. It will be beneficial to reproduce clauses 3 and 4 of Office Note, as under:

"3) The consultant for the said work, Ashfaque Ahmed Consultancy Pvt.Ltd. also submitted their opinion vide letter dated 06.05.2024 (Pl. refer, reference no.7) and opined that, the quantity certificate submitted by Aditya Construction, Nagpur does not fulfill the criteria laid down in the tender document.

Considering above facts it can be concluded that, the bidder Aditya Construction, Nagpur does not satisfy the required criteria with regard to execution of stone work experience of Red sand Stone / Yellow sand stone / basalt Stone / Marble Stone item mentioned in the qualification criteria.

4) As per the work experience certificate submitted, (Pl.Refer, reference no.2, Dated 10-11-2023,) where in the CR masonry work is mentioned as 234.948 cum at Sr.No.5 in the certificate. Further, in the same certificate, the M-35 concrete work is mentioned as 236.732 cum. However, as per the revised submission of Work Experience Certificate made pertaining to work experience (Pl. Refer, reference no.3, dated 28-3-2024) there is no mention of CR masonry work. Also, the quantity of M-35 concrete work is mentioned as 71.88 cum. Thus the figures mentioned in both the certificates are different. Hence, there is discrepancies in the submission made, vide two certificates.

When the work is progress, the substantial reduction as mentioned with regard to M-35 concrete from 236.732 Cum to 71.88 Cum within a period of 4 months period cannot be justified. This discrepancy is unexplainable."

34. The technical bid was rejected on the ground that there are three certificates issued on different dates with different specifications, details of work executed and nature of work, which raises doubt and confusion about the required qualification. Moreover, on perusal of statement of performance, there are many incomplete works and when limit of 12 months is given, even after 7 to 8 years, the work is seen as incomplete. When there is inordinate delay in completion of work, which compelled Tender Committee to infer poor performance. There is litigation history. Even though every information about the litigation placed on record, it cannot be overlooked that as public money and public purpose involved in the project those should not be halted for such unwarranted litigation. The employer is of considered opinion, that there is a tendency of the petitioner of filing unwarranted litigation against various departments. The petitioner has not only filed litigation against the State Government, but also against the NIT, VNIT, Nagpur Municipal Corporation, Municipal Council, Bhadrawati, NMRDA, Nagpur, MSRTC, Nagpur, Executive Engineer, Minor Irrigation Division, Chandrapur, Chief Officer, Nagar Parishad Morshi, Executive Engineer, Amravati Medium Project

Division, Chief Officer, Municipal Council Katol and Maharashtra Jeevan Pradhikaran, etc. Thus, this Court cannot substitute its opinion for the opinion of employer which appears to be plausible.

35. So far as mala fide is concerned, there is no pleading of mala fide, only the words used by the petitioner in rejoinder as "political master". However, the allegations are vague and having no substance. In fact, the production of documents along with bid are necessary to allow the employer to assess or test the bidder. Therefore, not providing any certain executed work on the date of completion and claiming that it is completed within time is not sufficient. This information is required to be specific and it is not open to the bidder to say subsequently, that if opportunity is granted, it would have been explained. The instructions given to the bidders are very clear.

36. Learned GP Shri D. V. Chauhan appearing for the respondents-Authorities, submitted that in fact there is no reason to grant an opportunity of hearing to the petitioner in tendering process. The learned GP relied on *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489.

37. The learned counsel for the petitioner relied on *A.K.Kraipak and others v. Union of India and others*, (1969) 2 SCC 262 in support of his contention that principles of natural justice are to be followed to secure justice and to prevent miscarriage of justice. The Hon'ble Apex Court in para-20 held as under:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*) . Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice....."

The learned counsel for the petitioner also placed reliance on *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers*, (2010) 4 SCC 785 and it is contended that it was not cited before the Hon'ble Supreme Court in *Silppi Constructions Contractors* (supra), wherein it is held that even administrative authorities are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. It was held in the said case that administrative authorities must also provide reasons that are, "supported by the reasons of rationality" and that without distinction between administrative and quasi-judicial authority in this regard has been "practically extinguished". It is contention of the petitioner that judgment in

Silppi Constructions Contractors (supra) did not take into account a previous binding judgment of a Bench of Coordinate Strength of the Supreme Court. The judgment of the Supreme Court in Silppi Constructions Contractors (supra) is per incurium.

The learned counsel for the petitioner also placed reliance on Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi, (1978) v SCC 405, wherein the Hon'ble Apex Court held in para-8 as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older"

38. It is the contention of the petitioner that technical bid of the petitioner was rejected, but the said ground was not there in existence. However, on perusal of the Office Note rejecting technical bid of the petitioner, everything is taken into account. It is expected from the petitioner that he should go through the instructions thoroughly and the required specifications in the bid document. Therefore, in our considered opinion, the citation relied on by the petitioner is not of any help. It is also contention of the petitioner that he was disqualified from the technical bid on the ground of record of poor performance. It is contended that solitary instance of something cannot constitute a record. He relied on Raymonds Limited v. Commissioner of Sales Tax, 2000 SCC OnLine Del 8. However, facts involved in the said matter are totally different. It pertains to income tax and though petitioner has been a registered dealer for more than 35 years, there was delay in filing return for the post quarter of the year 1992. In this background, the Hon'ble Apex Court held that this solitary instance cannot be taken as a ground for a meaning or apprehension that the petitioner would not meet its liability of paying tax regularly.

39. The learned counsel for the petitioner also placed reliance on Tata Cellular v. Union of India, (1994) 6 SCC 651 in support of his contention that the conclusion of poor performance by the petitioner is baseless. However, record shows that time limit to complete the work allotted is of 12 months and in spite of that even

after 7 to 8 years, work shown as "incomplete". Therefore, it is not in one or two incidents of incomplete works, but there are several incomplete works. So far as contention of the petitioner that the joint venture of the petitioner in NMC given a rating of 'good'. However, as discussed above, there is no material so as to come to the conclusion that performance of the petitioner was 'good'.

40. The learned counsel for the petitioner placed reliance on ABCI Infrastructure Pvt.Ltd. v. Union of India and others, 2025 SCC OnLine SC 327, wherein the Hon'ble Apex Court while explaining what is mistake observed in para-5 as under:

"5. A mistake may be unilateral or mutual, but it is always unintentional. If it is intentional, it ceases to be a mistake. Mistakes or errors, though avoidable, are committed inadvertently. They have varied consequences in law. As per Section 20 of the Indian Contract Act, 1872 whereby both parties to an agreement are under a mistake as to matter of fact essential to an agreement, the agreement is void. The explanation to Section 20 says that an erroneous opinion as to the value of the thing which forms the subject matter of an agreement is not deemed to be a mistake as a matter of fact. This will not be a case covered by Section 20 of the Contract Act. However, this is not the first time that this question has arisen either before this Court or Courts outside of India. In West Bengal State Electricity Board v. Patel Engineering Company Limited³, this Court referred to paragraph 84 of American Jurisprudence (2nd Edition, Volume 64 at page 944), which reads:

"As a general rule, equitable relief will be granted to a bidder for a public contract where he has made a material mistake of fact in the bid which he submitted, and where, upon the discovery of that mistake, he acts promptly in informing the public authorities and requesting withdrawal of his bid or opportunity to rectify his mistake particularly when he does so before any formal contract is entered into."

It is submitted that it is an inadvertent mistake on the part of the Nagpur Municipal Corporation. As such, the petitioner needs to be granted opportunity to rectify his mistakes, particularly he does so better in former contract is entertained too. However, as discussed above, due opportunity was granted to the petitioner to place on record certificates about execution of work, nature of work and quantity of work. However, there were three different certificates submitted by the petitioner for the same work. Therefore, thorough enquiry was made to the officials of NMC, there is no clear information provided about the nature of work, as reflecting in some places in certificates as basalt work, which was not there at some of the places. Thus, there is no substance in the contention that no opportunity was granted.

41. The learned counsel for the petitioner placed reliance on New Horizons Limited & Ors. v. Union of India & Ors., (1995) 1 SCC 478 in support of his contention that while evaluating the experience of joint venture company, a tenderer experience of the constituents of the joint venture company should be

treated as its own experience. However, it is made clear that terms and conditions of the tender should be construed from the standpoint of a prudent businessman. Terms of the offer of the tenderer should be first considered and if found suitable, then only its credentials and ability to perform the work should be considered from a practical point of view. As already discussed, there is specific provision in the tender itself that the experience of sub-contractor would not be counted in the experience of the principal contractor.

42. The petitioner also placed reliance on Zonal General Manager, Ircon International Limited v. Vinay Heavy Equipments, (2015) 13 SCC 680 in support of his contention that experience of sub-contractor needs to be counted as experience of main contractor. However, in para-9 itself, it is made clear that -

“Insofar as the question of primary liability therein is concerned, the law on subcontracts and employer liability is amply clear. In the absence of covenant in the main contract to the contrary, the rules in relation to privity of contract will mean that the jural relationship between the employer and the main contractor on the one hand and between the subcontractor and the main contractor on the other will be quite distinct and separate.”

Thus, covenant covering the issue that experience of sub-contractor will not be counted is very specific. Thus, this citation is of no use.

43. So far as reliance placed on Kamal Construction Co. v. State of Maharashtra & Ors., 2021 SCC OnLine Bom 6815 is concerned, there is no ground of changing any terms of the tender notice after the process of tender had commenced. The judgment in Kamal Construction Co. (supra), this Court specifically observed that after the process of tender had commenced, the corporation change the tender terms and conditions to accommodate the petitioner. This would have amounted to changing the rules of the game after the game had commenced. Thus, citation relied on is misplaced. Similar, is the view taken in Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation & Ors., (2000) 5 SCC 287, wherein Hon’ble Apex Court held that the High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena, its life changing rules of the game after it had begun and, therefore, in the Government or the Municipal Corporation was alter the conditions and fresh process of tender was the only alternative permissible. There is no dispute over the proposition of law. However as said above there was no such averments nor there is any change in terms and conditions of tender.

44. The learned counsel for the petitioner also placed reliance on ME Infraprojects v. MCGM, 2019 (1) Mh.L.J. 56, wherein the Hon’ble Apex Court held that -

“16. It is graphically clear that to disqualify a bidder applying the said clause, the municipal corporation would be required to examine the bid documents, and on such examination the municipal corporation is required to record its subjective satisfaction, on the existence of any of the three

aspects as contained in the said clause, which inter alia pertain to any false representations, record of poor performance and the disclosure of the litigation history. Such examination and consideration would take within its ambit, a duty and an obligation to form an opinion on the relevancy of such disclosure, also when it comes to disclosure of the litigation history and which has to be only in the context of the tender. The test is of a nexus of the said litigation with the award of the tender, the performance of the work under the tender, applying the test of public interest.”

However, as discussed above, there are so many litigation filed at the instance of the petitioner against the Government Authorities including local bodies. Considering the amount involved in the project, opinion of the employer that it will not be beneficial to halt the project on any unwarranted litigation is justified. So far as performance is concerned, the petitioner himself has given the details from which it appears that there are many works not completed by the petitioner within time prescribed and therein inordinate delay in executing the project. This reason is also sufficient to reject the technical bid of the petitioner. Moreover, experience certificates issued raises doubt and in spite of granting opportunity to the petitioner as well as to the Nagpur Municipal Corporation, no reply to specific query, is provided.

45. The learned GP placed reliance on *Reliance Airport Developers (P) Ltd. v. Airports Authority of India*, (2006) 10 SCC 1, the Hon’ble Apex Court also elaborately explained “errors of fact and errors of law”. What was the old rule in respect of errors of fact as well as errors of law and new rule in respect of the same, which reads thus:

“Errors of fact

Old rule: The court would quash only if the erroneous fact was jurisdictional.

New rule: The court will quash if an erroneous and decisive fact was

(a) jurisdictional:

(b) found on the basis of no evidence: or

(c) wrong, misunderstood or ignored.

Errors of law

Old rule: The Court would quash only if the error was

(a) jurisdictional; or

(b) on the face of the record.

New rule: The court will quash for any decisive error, because all errors of law are now jurisdictional.”

The learned GP also placed reliance on *Reliance Airport* (supra) in support of his

contention that in the multi-tier system in the decision making process the authority empowered to take a decision can accept the view expressed by one committee in preference to another for plausible reasons. It is not bound to accept the view of any committee. These committees, it needs no emphasis, are constituted to assist the decision making authority in arriving at the proper decision. It is a matter of discretion of the authority to modify the norms. It is not a case of absolute discretion.

The Hon'ble Apex Court further held that "Discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful but legal and regular."

The respondents-Authorities have every discretion to prefer a fair bidder, who has fulfilled the eligibility criteria as per the terms and conditions of the tender.

46. The learned GP relied on Silppi Constructions (supra) in support of his contention that the principles of natural justice were followed while disallowing the technical bid of the petitioner. While discussing various judgments of Hon'ble Apex Court, it is observed in paras-8, 9 and 11, which read as under:

"8. In Raunaq International Ltd. v. I.V.R. Construction Ltd. [Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492] , this Court held that the superior courts should not interfere in matters of tenders unless substantial public interest was involved or the transaction was mala fide.

9. It was held that the courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only in furtherance of public interest and not merely on making out a legal point.

11. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] it was held that while exercising power of judicial review in respect of contracts, the court should concern itself primarily with the question, whether there has been any infirmity in the decision-making process. By way of judicial review, the court cannot examine details of terms of contract which have been entered into by public bodies or the State."

After considering various citations, the Hon'ble Apex Court also observed in para-25 as under:

"25. That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State-would come to a grinding halt. The State must be given sufficient-leeway in this regard.

Respondents 1 and 2 were entitled to give reasons-in-the-counter to the writ petition which they have done.”

It is submitted by the learned GP for the respondents- Authorities that in spite of this position, due opportunity was given to the petitioner at the time of testing eligibility of technical bid.

47. The learned GP placed reliance on *Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others*, 2023 SCC OnLine SC 671, wherein the Hon’ble Apex Court held as under:

54. As observed by this Court in *Jagdish Mandal v. State of Orissa*, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contract, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

48. The learned GP also placed reliance on *N.G. Projects Ltd v. Vinod Kumar Jain and others*, (2022) 6 SCC 127 wherein the Hon’ble Apex Court explained duty of Court. The reliance is placed by the Hon’ble Apex Court on *Tata Cellular (supra)*, wherein it is held in paras-77 and 94, which read as under:

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality**, namely, *Wednesbury* unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secy. of State for the Home Deptt., ex p Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'."

From the observations made in this para in *Tata Cellular*, The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

It is observed thus that the result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer.

In *N.G. Projects (supra)* the Hon'ble Apex Court assert that the Court should refrain from interfering in the grant of tender, what is held in the said judgment in para-23 reads as under:

"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 tender 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 the present day Governments are expected to work. "

49. The learned GP relied on the decision in the matter of A. G. Construction v. The State of Maharashtra (Writ Petition No.10517 of 2023), decided on 13/09/2023 by this Court (Aurangabad Bench), in which similar issues were involved and there were similar clauses, wherein the bidders are subject to be disqualified, if they have misleading or false representation in forms,record of poor performance, no properly completing the contract, inordinate delay, litigation history or financial failures, etc.

This Court (Aurangabad Bench) observed in para-12, which reads as under:

"12. The inference which is deducible from the provisions made in the tender document is that it is mandatory for the bidders to furnish an undertaking pertaining to the penal action to satisfy the eligibility criteria. These are essential conditions to be followed by the bidders in the tender process. Over and above, in case if there is false representation in the forms, statements and the documents submitted by the tenderers and if there is litigation history or record of poor performance, delay in performance or financial failures, then a power is reserved for imposing disqualification."

In view of above, this Court in respect of suppression of fact held in para-16 that -

"16. We find that this is suppression of material fact and furnishing of false information. The respondent No.2 is justified in holding that the misleading and false information in the form of undertaking was furnished by the petitioner."

The contention of the petitioner that an undertaking as contemplated under Condition No.2.2 furnished by him and disclosed that no penal action was imposed against the petitioner at any time in contract with any Government Department and other Department. However, while evaluating bid, it was found

that the petitioner suffered orders of suspension from the Executive Engineer of RTH Patna debarring it for a period of one year. Similarly, there are two other orders of suspension. The said suspension orders were challenged in writ petition and the petitioner succeeded to secure interim directions permitting the petitioner to participate in other tenders. Thus, the petitioner is contending that there was no penal action against the petitioner. In view of Condition No.2.2, it is held that initiation of penal action against the petitioner ought to have been disclosed while submitting his bid. This is suppression of material fact. Apart from this, there was record of poor performance, inordinate delay, litigation history in the said matter. The litigation history was not given by the bidder while submitting the bid. It is specifically observed in writ petition which was filed before the Delhi High Court, the orders of suspension were never quashed and while passing the final order the period of suspension was over, and therefore the petition was disposed of.

In the matter of Anik Industries Ltd. v. Maharashtra Airport Development Company Ltd. and another (Writ Petition (L) No.6662 of 2025), decided on 26/06/2025 by this Court (Principal Seat), this Court held that the petitioner was rightly disqualified as he failed to submit mandatory documents in prescribed format. In paras-33 and 34, it is held as under:

"33) Coming to the aspect of Petitioner questioning the eligibility of Respondent No.3, once Petitioner itself is found technically disqualified, the issue of eligibility of other bidders becomes academic. Mr.Thakker has however relied upon judgment of the Apex Court in Banshidhar Construction Pvt. Limited (supra) in support of his contention that even though Petitioner is declared ineligible, it is entitled to question the eligibility of Respondent No.3. Reliance is placed on the findings recorded by the Apex Court in para-22 of the judgment which read thus:-

22. When the technical bid of the appellant was rejected by the respondents on 6-5-2024 on the ground that it did not comply with Clause 10 of NIT, namely Part I/Cover I Other Important Documents (OID) Point 02 Appendix II (power of attorney for signing of bid), there was no justification on the part of respondent authorities for accepting the technical bid of Respondent 8, which clearly was not in compliance with the same mandatory Clause 10 of NIT. The respondent BCCL has miserably failed to justify as to how the technical bid of Respondent 8 was accepted when it had not submitted the requisite important documents related to the qualification criteria as mentioned in Clause 10 of NIT.

34) In our view, the judgment of the Apex Court in Bansidhar Construction Pvt. Ltd. cannot be relied upon in support of absolute proposition that in every case where the Petitioner's disqualification is upheld, the Court must hold an enquiry into eligibility of the successful bidder. The judgment in Bansidhar Construction Pvt. Ltd. is rendered in the unique facts of that case. The Appellant therein had questioned award of contract to Respondent No.8 therein on the ground that Respondent No.8 did not possess the necessary qualification criteria prescribed in Clause-10 of the NIT. Respondent No.8 had failed to submit scanned copies of

annual audit reports for three financial years, which was the mandatory requirement of the NIT. It was also found that the bid of the Appellant therein was rejected on the ground of non-compliance with Clause-10 of the NIT on account of failure to submit other important documents like Power of Attorney. The Apex Court held that a discriminating treatment was given to the Appellant as the bid of Respondent No.8 was accepted though he had failed to comply with the submission of mandatory documents alongwith its bid. In our view, the judgment in Bansidhar Construction Pvt. Ltd. rendered in the peculiar facts of that case would not assist the case of the Petitioner.”

50. The reliance is also placed by the learned GP on *Sterling Computers Limited v. M/s. M & N Publications Limited and others*, (1993) 1 SCC 445, wherein the Hon’ble Apex Court emphasized that “Courts while judging the constitutional validity of executive decisions must grant certain measures of freedom of “play in the joints” to the executive”. This principle is laid down by Justice Holmes.

51. It is the contention of the respondents-Authorities that the author of the tender document is the best person to understand and appreciate its requirement. The learned GP relied on *Agmatel India Private Limited v. ResourSYS Telecom and others*, (2022) 5 SCC 362, wherein the Hon’ble Apex Court held in para-26 as under:

“26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.”

52. After going through the relevant terms and conditions of the tender and after going through the citations relied on and considering factual aspect of the matter, we are of the considered opinion that present petition cannot be entertained. It appears that opportunity was granted to the petitioner before rejecting the technical bid by informing shortfalls to the petitioner vide communication dated 25/04/2024. In explanation, though it is claimed that there is typographical error in certificates issued by Nagpur Municipal Corporation, Nagpur, there was specific query put by the respondents-Authorities to NMC, as there were three different certificates dated 10/11/2023, 28/03/2024 and 26/04/2024 filed along with the tender. In these certificates there were discrepancies in the nature of work, difference in quantity and the words “Basalt Stone Work” appear to be added subsequently. Therefore, specific query was made to the NMRDA for clarification vide communication dated 16/07/2024, but no proper information was supplied by the NMRDA.

53. The amount of completion of work creditable to M/s. D. Thakkar Construction Pvt.Ltd. worked out from the year 2018-19 to 2024 does not qualify the condition of amount of completion of work. There was suppression of material information that the petitioner was suffered a disqualification and tender allotted him in respect of one construction of bridge was cancelled and he was blacklisted. Similarly, in the case of tender of construction of Priyadarshini Hostel, wherein failure to maintain the required pace of work by the contractor as per the agreement, it was decided to terminate the contract. Similarly, in the construction of cement concrete road, the tender allotted to the petitioner was also cancelled. Moreover, from the certification of work at page-1110, it appears that there are many works in progress even after 7 to 8 years, which were required to be completed within 12 months. Thus, the decision of the Tender Committee that performance is poor, is plausible inference and the Court cannot substitute its decision in place of decision of the Tender Committee and consequently of the employer.

54. It also appears that the conditions in the tender document itself are clear and there was no change in the said conditions. Therefore, it is the bidder, who has to take optimum care before submitting his bid. On perusal of foregoing discussion, many conditions are not satisfied by the petitioner. Though it is alleged that the sub-contractor's work can be counted in the work of principal contractor, the same cannot be accepted in view of specific condition in clause 4.5 of the tender document that sub-contractor's experience and resources shall not be taken into account in determining the bidders compliance with the qualifying criteria.

55. It is further contention that litigation history is duly given by the petitioner, however, in view of clause 7 of the tender document even though the bidder meet the above qualifying criteria, they are subjected to the disqualification on the basis of grounds mentioned in clause 7. Though the litigation history is placed on record, it is the decision of the employer considering public money and public interest involved in the project whether to engage such agency for executing the project, which may halt their project itself and cause loss to the public exchequer. Thus, the right is reserved for imposing disqualification on the basis that there is litigation history or record of poor performance, inordinate delay in performance of work or financial failures. It was mandatory to furnish essential information and proper documentation.

56. It appears from the submission of the petitioner that the petitioner has not gone through the specifications along with the tender conditions. As held in *Tata Cellular (supra)*, the Court does not seat as a Court of appeal, but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible. In view of the judgment of *N.G.Project (supra)*, 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.

57. In our considered opinion, every aspect is taken into account by the employer, even opportunity is granted at the stage of technical bid itself, however, it appears that the confidence and trust which is required by the employer to be considered was never inspired, which is the base for allotting any work along with the conditions in the tender. Accordingly, there is no substance in the petition. The petition is liable to be dismissed. Accordingly, the same is dismissed.

56. In view of above, Rule stands discharged. No order as to costs.

At this juncture, learned counsel for the petitioner requests for continuation of statement made by learned GP which is reflecting in the order dated 05/07/2024 of this Court that, tender shall not be finalized and no steps shall be taken to prejudice the interest of the petitioner qua the tender. Considering the fact that the matter is pending since one year, three weeks' time is granted to take appropriate steps in the matter and statement made by the learned GP dated 05/07/2024 is hereby continued for another three weeks.