
(2025) 02 BOM CK 0764

In the Bombay High Court

Case No : Writ Petition No. 701 Of 2025 With Interim Application No. 1311 Of 2025

M/s Watergrace Products

APPELLANT

Vs

Nashik Municipal Corporation & Ors

RESPONDENT

Date of Decision : 20-02-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2025) 02 BOM CK 0764

Hon'ble Judges : Alok Aradhe, CJ; Bharati Dangre, J

Bench : Division Bench

Advocate : Aspi Chinoy, Romal S. Kohli, Vikram R. Chavan, Yogendra M. Koli, Nikita K. Dharamshi, M/s. C. K. Legal, Ashutosh Kumbhakoni, Chaitrali Deshmukh, Neha Bhide, O. A. Chandurkar, G. R. Raghuwanshi

Final Decision : Disposed Of

Judgement

Alok Aradhe, CJ

1. In this petition, the petitioner has assailed the validity of condition No.3.2.2, 3.2.3 and 3.4.2 of the impugned Request for Qualification (RFQ)/Tender document bearing No.01/2024-25 dated 11th October 2024. In order to appreciate the petitioner's challenge to the impugned conditions, relevant facts need mention, which are stated infra.

2. The petitioner is a proprietorship firm involved in rendering services, such as solid waste management and biomedical waste management to various Municipal Corporations and public bodies within the State of Maharashtra and all over the Country. The respondent No.1 viz. Nashik Municipal Corporation (hereinafter referred to as the "Corporation") is a body established under the Maharashtra Municipal Corporation Act, 1949 and is an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

3. The Corporation had issued an e-tender notice No.21/2018-19 inviting bids for

service of sweeping and cleaning of roads in Nashik Municipal Corporation area. The petitioner participated in the tender process and on 4th June 2020, a work order was issued to it for manual sweeping and cleaning of the roads by providing 700 sweepers. The petitioner has been carrying on the work of manual sweeping and cleaning. The contract awarded to the petitioner has been extended from time to time and is presently continuing. The petitioner has performed the work worth ₹ 108 Crores.

4. The general body of the Corporation passed a resolution on 7th March 2024 by which it was resolved that the Chief Accounts and Finance Officer (CAFO) and the Municipal Chief Auditor (MCA) should carry out the process of issuing tender for manual sweeping and cleaning of the roads by providing 875 sweepers/workers and the same should be issued as per the guidelines of Central Vigilance Commission (CVC) and the State Government. In pursuance of the aforesaid resolution, the Corporation issued RFQ bearing No.01/2024-25 on 11th October 2024 for services of sweeping, cleaning of roads, public and community toilets, river bank, auditorium and NMC school toilets in Corporation area. The estimated cost of the tender work is ₹ 176 Crores for a period of five years i.e. approximately ₹ 35 Crores annually. Section (E) of the RFQ deals with qualification and bidding. Clause 3 of Section (E) prescribes the criteria for evaluation, whereas Clause 3.1 deals with evaluation parameters, Clause 3.2 deals with Technical Capacity. Clause 3.2.2 reads as under:

"3.2.2 The Bidder shall have experience of two Solid Waste Collection and Transportation projects in any one year within the last three years in any country/ India before the bid due date, in which:

- a) cumulatively covering at least 3,00,000 (Three Lakh) households through door-to-door collection;
- b) cumulative supplying of sweepers at least 1200 (One Thousand Two Hundred) and
- c) Project cost of each such project should be more than Rupees 70 (Seventy) crores."

5. The aforesaid clause had initially stipulated the "Solid Waste Collection and Transportation". However, in response to the pre-bid queries on 18th October 2024, the Corporation rectified the same to "Experience of Manual Sweeping Projects".

6. Clause 3.4 of the RFQ deals with Financial Qualification. Clause 3.4.2 is extracted below for the facility of reference:

"3.4.2 The minimum Net Worth (the "Financial Capacity") of the Bidder shall be ₹ 100 Crores as on 31.03.2024.

7. The petitioner, in the instant petition, has assailed the validity of Clause 3.2.2 which has reduced the experience requirement of "Manual Sweeping Projects" to

one year within last three years and the validity of Clause 3.4.2 which requires a bidder to have a minimum net worth of ₹ 100 Crores as on 31st March 2024, inter alia; on the ground that the aforesaid grounds are ex facie arbitrary, discriminatory and designed to benefit the large operators/solid waste transporters who might have a net worth but do not have the requisite previous experience. In the aforesaid factual backdrop, the issue with regard to validity of the impugned tender conditions arises for our consideration.

8. Learned senior counsel for the petitioner submitted that impugned tender conditions are contrary to the resolution dated 7th March 2024 passed by the Corporation itself by which it was resolved to issue the tender in accordance with guidelines of CVC and the State Government. It is pointed out that Clause 9.15.2(i) of the "Manual for Procurement of Consultancy and other Services" does not prescribe any stipulation regarding the net worth of the bidder. It is also pointed out that Clause 9.15.2(ii) stipulates that "bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services" and "the bidder must have successfully executed/completed similar services (definition of "similar services" should be clearly defined) over the last three years in the current financial year and the last three financial years.

9. It is contended that the Government of India has issued Model Tender Document for procurement of Non-Consultancy Services which prescribes for similar stipulation of experience of three years and prescribes that net worth of bidder firm should not be negative on the relevant date and should not have eroded by more than 30% in last three years. It is pointed out that Guidance Notes for Selection of Implementation Agencies has been issued by the Government of Maharashtra which is based on existing Government of India guidelines. It is, therefore, contended that the stipulation contained in impugned tender conditions is contrary to guidelines issued by the CVC and the State Government.

10. It is urged that the tender only involves supply of manpower/sweepers with basic cleaning material and does not involve any substantial operational expenditure or capital expenditure. It is submitted that the impugned tender conditions are ex facie arbitrary and discriminatory. In support of aforesaid submissions, reliance has been placed on decision of Supreme Court in *ICOMM Tele Limited Vs. Punjab State Water Supply and Sewerage Board and Anr.* (2019) 4 SCC 401

11. On the other hand, learned senior counsel for respondent No.1 - Corporation submitted that the tender in question relates to maintenance of public hygiene and over-all cleanliness and the Corporation cannot afford to adopt any 'trial-and-error method'. It is submitted that the duration of the contract is five years and therefore, is a long-term contract. It is pointed out that during the aforesaid period of five years "Kumbh-Mela" is going to be held from June 2027 to August 2027 and the Corporation would have a floating population of 15 lakh per day. It

is stated that the Corporation is intending to float a separate tender for the aforesaid event. However, the possibility that the proposed contractor itself will have to undertake the work of maintenance of public hygiene even during aforesaid period of "Kumbh-Mela" cannot be ruled out and therefore, the condition with regard to net worth of ₹ 100 Crores has been introduced. It is contended that the aforesaid net worth requirement is necessary to successfully perform the work and merely because the CVC guidelines do not prescribe for net worth requirement, the prescription of having net worth ₹ 100 Crores does not make the same contrary to the CVC guidelines.

12. It is also urged that the petitioner is performing a very limited work of sweeping and cleaning the roads in NMC area as compared to the work covered under the tender i.e. sweeping and cleaning of roads, public community toilets, river banks, auditoriums and NMC school toilets in Corporation area. It is contended that award of contract is essentially a commercial transaction and this Court, in exercise of powers of judicial review, cannot determine the net worth or the requirement of turn-over. It is submitted that the tender conditions have been prescribed to award the contract to a more experienced tenderer and for enabling a wider participation in the tender. It is urged that no interference is called for in this petition.

13. In support of the aforesaid submissions, reliance has been placed on two division bench decisions of this Court in Rosmerta Technologies Ltd. Vs. State of Maharashtra through Principal Secretary & Anr. 2022 SCC OnLine Bom 2738 and Indo Allied Protein Foods Pvt. Ltd. Vs. State of Maharashtra 2025(1) Mh.L.J. 299.

14. We have considered the rival submissions made on both sides and have perused the record.

15. The scope of interference with tender conditions in exercise of powers of judicial review is well delineated by catena of decisions of Supreme Court. The discretion to grant largesse including contracts, quotas and license and so on must be structured by rationale, relevant and non-discretionary standard or norms. (See : Narendrakumar Maheshwari Vs. Union of India) 1990 (Supp) SCC 440). It is well settled legal proposition that it is open to the State to impose conditions in the tender prescribing the eligibility criteria and if the State can justify the tender conditions in the context of a particular contract the Courts will not interfere and whenever there are different alternatives, it is not for the Courts to suggest that a particular alternative is justified. In celebrated case of Tata Cellular Vs. Union of India 1994(6) SCC 651, it was held that terms of invitation to tender are not open to judicial scrutiny because invitation to tender is in the realm of contract. However, it has been held that decision taken by a body functioning in an administrative or quasi administrative sphere can be tested on the application of Wednesbury principle of reasonableness and has to be free from arbitrariness, not effectuated by bias or mala fide. In Director of Education & Ors. Vs. Educomp Datamatics Ltd. & Ors. 2004(4) SCC 19 and in Global Energy Ltd. Vs. Adani Exports Ltd. 2005(4) SCC 435 it was held that

Courts cannot whittle down the terms of the tender, unless the same are shown to be wholly arbitrary, discriminatory or actuated by malice. Similar view was taken in ICOMM Tele Limited (supra).

16. In the backdrop of aforesaid well settled legal principle, we may now examine the twin issues, firstly; whether the impugned tender conditions are arbitrary or discriminatory and are violative of the mandate contained in Article 14 of the Constitution of India and secondly; whether the impugned tender conditions provide relevant standard or norm.

17. The tender involves only supply of manpower/sweepers with basic cleaning materials and does not involve any substantial operational expenditure or capital expenditure. The Corporation, in its resolution passed on 7th March 2024 had decided to issue the tender in question as per the guidelines of CVC and the State Government. Undoubtedly, "the Manual for Procurement of Consultancy and Other Services" issued by the Ministry of Finance, Government of India (CVC) does not stipulate about the net worth of a bidder. However, Clause 9.15.2 which prescribes "Qualifying Criteria" and Clause 9.15.2(ii) prescribes "Past Experience" which read as under:

9.15.2 Qualifying criteria to be met by bidders to qualify for award of the Contract may be specified. Although the qualification criteria would depend on the type of service, its complexity and volume, but a sample qualifying criteria is given below:

i) Financial Capability:.....

ii) Past Experience:

a) The bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services to Central/State Government/PSUs/Nationalised Banks/ Reputed Organisations. Services rendered with list of such Central/State/PSUs/ Nationalized banks with duration of service shall be furnished.

b) The bidder must have successfully executed/completed similar Services (definition of "similar services" should be clearly defined), over the last three years i.e. the current financial year and the last three financial years:-

1. Three similar completed services costing not less than the amount equal to 40% (forty percent) of the estimated cost; or

2. Two similar completed services costing not less than the amount equal to 50% (fifty percent) of the estimated cost; or

3. One similar completed service costing not less than the amount equal to 80% (eighty percent) of the estimated cost."

18. The Model Tender document for Procurement of Non-Consultancy Services issued by the Ministry of Finance, Department of Expenditure, Government of

India, prescribes the criteria with regard to Experience and Past Performance and Financial Capability which are as follows:

Criteria 1 – Experience and

Relevant variables

Please submit evidence in

a) Similar Experience : Completed or substantially (at least ? payments received) completed similar works during last ? years should be either of the following:-

i) Three similar completed works each costing not less than the amount equal to 40 (forty) percent of the estimated cost; or

ii) Two similar completed works each costing not less than the amount equal to 50% (fifty) percent of the estimated cost; or

iii) One similar completed work costing not less than the amount equal to 80% (eighty) percent of the estimated cost;

iv) [Define the similar work based on value/scope, methodology etc.]

v) Note : Work experience certificate from the public sector or from public listed company/private company/Trusts having annual turnover of Rs.500 crore and above subject to the same being issued from their Head office by a person of the company duly enclosing his authorization by the Management for issuing such credentials. Certificate from the private individual shall not be accepted.

?=[80%]

?=[7]

Form 4.1: Performance Statement.

b) Nonperforming Contracts and Litigation: Bidder shall furnish documentary evidence to demonstrate that,

i) Non-performance of a contract did not occur within the last ? years, based on all fully settled disputes or litigation information.

ii) Financial implications of all pending litigation shall in total not exceed ? of the Bidder's net worth.

iii) Failure to sign a contract after receiving a notice of award has not occurred in the past ? years

?=[5]

?=[10%]

?=[5]

Form 4.2:

Non performance Litigation Statement

Criteria 2 – Performance Capability:

[In case of Time based (Input Admeasurement), list here key personnel and critical equipment critical for the performance of Services to the desired quality and standards. These criteria may not be essential for other forms of BOQ/ Contract, but List these if required. If the service is not dependent on Key Personnel and/or Critical Equipment, these may be omitted.]

a) Key Personnel: Bidder shall furnish documentary evidence that it would deploy (employed), hired) Key Personnel (as stipulated in Section VIII-1 below) needed to perform the Service to the specified performance standards.

Form 3.3: Personnel Deployment Plan

b) Critical Equipment: Bidder shall furnish documentary evidence that it would deploy (own, hire, lease) Critical Equipment (as stipulated in Section VIII-2 below) needed to perform the Service to the specified performance standards.

Form Equipment Deployment Plan 3.4:

Criteria 3 – Financial Capability

Note : Bidder shall furnish documentary evidence to demonstrate his current Financial Capability and demonstrate it as per the following sub-criteria.

a) Financial Viability

i) The average coefficient of Current ratio (Current Assets / Current Liabilities): Greater than ?

i) The average coefficient of Debt ratio (Total Debt / Total Assets): Less than ?

b) Turnover: Minimum average annual turnover of at least ? of the advertised value of this tender, at least ? of which should be from Service Contracts], calculated as total certified payments received for contracts in progress or completed, within the last ? years., and

?=[1(one)]

?= [50%]

?= [60%]

? = [50%]

? = [5]

Form 4.3:

Financial Capability Statements

c) Financial Liquidity:

i) Access to Funds: Bidder should have access to or has available liquid assets, lines of credit and other financial means, other than any contractual advance payments, to meet ? months' cash flow of the estimated bid value net of applicant's commitments in this period for other contracts.

ii) The net worth: The Net Worth of Bidder firm (or principal of authorized representative) should not be negative on 'The Relevant Date' and should not have eroded by more than ? in the last 3 years.

?=[3]

?=[30% (thirty percent)

19. Thus, it is evident that impugned tender conditions do not conform to either the resolution passed on 7th March 2024 by the Corporation or the CVC guidelines in so far as it provides the requirement of experience in as much as the CVC guidelines require a bidder to have experience of three years which has been reduced to one year in the instant case.

20. The estimated cost of tender work is □ 176 crores over a period of five years i.e. approximately □ 35 Crores annually. Therefore, the prescription of minimum net worth of □ 100 Crores as on 31st March 2024 instead of prescription of net worth stipulation is arbitrary. Similarly, an experienced contractor is likely to execute the work successfully. Therefore, reducing the requirement of having the work experience from three years to one year cannot but be said to be arbitrary, and is violative of mandate contained in Article 14 of the Constitution. The first issue is, therefore, answered in the affirmative.

21. Now we may advert to the justification offered by the Corporation in prescribing the impugned tender conditions. The assumption made by the Corporation, that the proposed contractor may have to execute the contract during the "Kumbh-Mela", has neither any basis nor requirement of execution of the work during the "Kumbh-Mela" by the proposed contractor, has even been remotely indicated in the RFQ/Tender. In any case, learned Senior Advocate for the Corporation has submitted that the Corporation proposes to issue a fresh tender for "Kumbh-Mela". The aforesaid fact is also evident from the brief note submitted to us during the course of hearing of this writ petition. The contention on behalf of the Corporation is that the petitioner has only limited experience of sweeping and cleaning of the roads in NMC area is also factually incorrect. From perusal of the experience certificate issued by the Corporation itself on 15th October 2024, it is evident that the petitioner is successfully executing the contract work of cleaning the public roads and garbage collection, cleaning of Godavari River bank stretch from Holkar bridge to Kapila Sangam. The apprehension of the Corporation that the proposed contractor may have to execute the contract work during "Kumbh-Mela" has no factual foundation and same cannot furnish justification for prescribing the impugned conditions.

22. In view of the preceding analysis, the inevitable conclusion is that the impugned tender condition Nos.3.2.2, 3.2.3 and 3.4.2 cannot be sustained, and the same are struck down. The Corporation is granted liberty to reframe the impugned conditions relating to the financial net worth and the work experience, and to proceed.

23. Accordingly, the writ petition is disposed of.

24. The interim application stands disposed of.