



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 32013 OF 2024

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**Mahendra Realtors and
Infrastructure Limited**

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

**WITH
WRIT PETITION (L) NO. 32852 OF 2024**

Dev Engineers

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy and Ms. Seema Sorte for petitioner in WPL/32013/2024.

Ms. Rama Subramanian for petitioner in WPL/32852/2024.

Mr. Abhay L. Patki, Addl. Govt. Pleader for respondent No.1-State in WPL/32013.

Mr. Mohit P. Jadhav, Addl. Govt. Pleader with Mr. Rakesh Pathak, AGP for respondent No.1 State in WPL/32852.

Dr. Milind Sathe, Senior Advocate with Mr. Pralhad Paranjape and Mr. Rahul Punjabi for respondent Nos. 2 to 4 in WPL/32013/2024 and respondent Nos. 2 & 3 in WPL/32852/2024.

Mr. S. M. Sagarla i/b. RMG Law Associates for respondent no. 4 in WPL/32852/2024.

Mr. Shubhabrata Chakraborti with Ms. Shivali Khadke for respondent No.5 in both petitions.

**CORAM: ALOK ARADHE, CJ. &
BHARATI DANGRE, J.**

**RESERVED ON : JANUARY 29, 2025
PRONOUNCED ON : FEBRUARY 12, 2025**

JUDGMENT (PER : CHIEF JUSTICE)

1. In writ petition (L) No.32013 of 2024, the petitioner has challenged the validity of the conditions contained in a tender floated by Maharashtra Film Stage and Cultural Development Corporation Ltd. (hereinafter referred to as the **Corporation**), in particular, the eligibility conditions contained in paragraph 12F of the tender document. The petitioner has also assailed the action of respondents in declaring bid of the petitioner as technically disqualified. The petitioner also seeks to quash and set aside the impugned order dated 15th October 2024 issued in favour of respondent No.5 and seeks a direction to re-tender the entire work.

2. In writ petition (L) No.32852 of 2024 the petitioner prays for a declaration that order dated 1st October 2024 rejecting the bid of petitioner therein and any actions, orders or steps consequent thereto are unconstitutional, *ultra vires*, non-est, illegal and bad in law. The petitioner seeks to quash and set aside the impugned order dated 1st October 2024 rejecting the technical bid of the petitioner. The petitioner also seeks direction against the respondents to conduct re-tender and reinstate the petitioner in the tender process.

3. Both the writ petitions arise out of the same tender floated by the Corporation and the issues which require consideration being common, the writ petitions are heard together and are

being decided by this common judgment. For the facility of reference, facts from writ petition (L) No.32013 of 2024 are being referred.

4. The petitioner is a registered partnership firm engaged in the business of civil engineering. The respondent No.1 Corporation floated a tender for "Repair and Upgradation of Studio 1, 2, 5, 7, 16 and Hospital Building" at Dadasaheb Phalke Chitranagari, Goregaon, East. On 12th September 2024 a pre-bid meeting was held by the Corporation and various queries raised by the bidders were answered. Thereafter, the Corporation decided to modify the quantities contained in Clause 12F of the Notice Inviting Tender (**NIT**). The revised Statement-VI was issued substituting the original statement. The petitioners participated in the pre-bid meeting.

5. The Corporation, thereafter, decided to extend the time limit for submission of the tender upto 23rd September 2024. In response to the aforesaid NIT, four tenderers viz. (i) Painterior Protective System LLP, (ii) Shandar Interiors Pvt. Ltd. (iii) Dev Engineers and (iv) Mahendra Realtors & Infrastructure Ltd. submitted their bids. On 24th September 2024, uploaded documents were forwarded to the Project Management Consultant (**PMC**) appointed by the Corporation. The Corporation, by e-mail dated 25th September 2024 informed the petitioners about the shortfall observed in their bids. The petitioners were asked to submit the short-fall documents on or before 27th September 2024.

6. The petitioner, on 25th September 2024 addressed a communication to the Deputy Engineer of the Corporation

seeking technical bid documents of all the bidders. The petitioner, thereupon annexed five out of seven short-fall documents as sought for by the Corporation. The short-fall documents submitted by the petitioner were sent for reconsideration to the PMC for the scrutiny on 27th September 2024. The PMC submitted a final scrutiny report on 30th September 2024. The Tender Acceptance Committee of the Corporation, on 1st October 2024 verified the scrutiny report and examined the issue of qualification of the technical bids of the bidders on the touchstone of qualifying criteria prescribed in Clause 12 of the tender documents.

7. The Tender Acceptance Committee found the technical bid submitted by the petitioner to be non-responsive. The decision on the disqualification of the petitioner's technical bid was downloaded by it on 2nd October 2024. On 1st October 2024, the final bids of the technically qualified bidders were opened and the bid of respondent No.5 viz. Painterior Protective System LLP was found to be the lowest. The petitioner, by communication dated 2nd October 2024 addressed to the Corporation stating that the quantities for qualification required in the tender notice are not in tune with Government Resolution dated 25th October 2019 and since some works were also not mentioned in the Bill of Quantities, the experience in respect of such items of work was erroneously asked for. The petitioner, sent a legal notice dated 4th October 2024 to the Corporation in furtherance of their letter dated 2nd October 2024. Thereafter another communication dated 4th October 2024 was sent by the petitioner to the Corporation.

8. The Board of Directors of the Corporation, vide resolution dated 14th October 2024, decided to award contract to respondent No.5. On 15th October 2024 work order was issued in favour of respondent No.5. The petitioner filed the writ petition on 17th October 2024. The petitioner, thereafter sought leave of this Court to amend the petition to add respondent No.5 and to challenge the work order dated 15th October 2024.

9. Mr. Ramesh Ramamurthy, learned Counsel for the petitioner in writ petition (L) No.32013/2024, while inviting attention of this Court to Clause 4 of the Government Resolution dated 27th September 2018, submitted that in order to avoid unnecessary suspicion and to maintain transparency, the bids should be opened in presence of maximum possible bidders. It is pointed out that in the instant case the bids were opened on 1st October 2024 after office hours without prior intimation. It is further submitted that the reasons for disqualification of the petitioner have not been communicated to it till today which amounts to violation of Clause 4.1 of the aforesaid Government Resolution. It is further submitted that the tender opening authority has not given any opportunity of hearing to the petitioner before disqualification of the technical bid. It is submitted that clause 4.1 of the Government Resolution dated 27th September 2018 prescribes that the financial bid has to be opened after giving an opportunity of hearing to disqualified bidders. It is contended that the procedure prescribed in Clause 4.1 of the Government Resolution dated 27th September 2018 has not been adhered to by the Corporation. It is pointed out that the technical bid was opened on 1st October 2024 at 6.00 p.m., beyond office hours.

10. It is also contended that the eligibility conditions in the NIT have been prescribed to favour respondent No.5 only and the same were fixed on non-existing works, which is impermissible in law. It is also urged that on 15th October 2024 the Model Code of Conduct for holding elections for the State Assembly had come into force.

11. In support of the aforesaid submissions, reliance has been placed in the case of ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Ors.***¹ and ***Indo allied Protein Foods Pvt. Ltd. Vs. State of Maharashtra***².

12. Ms. Rama Subramanian, learned Counsel for petitioner in Writ Petition (L) No.32852 of 2024, while adopting the submissions made by Mr. Ramesh Ramamurthy, learned Counsel for the petitioner in writ petition (L) No.32013 of 2024, has contended that without assigning any reasons, the petitioner's technical bid was held to be non-responsive. It is contended that the technical bid of the petitioner was rejected on flimsy grounds and the requirement of annexing TDS Certificate pertains to a contractor who deals with private contracts.

13. On the other hand, Mr.Sathe, learned Senior Advocate appearing for respondent Nos.2 to 4 in writ petition (L) No.32013/2024 and for respondent Nos.2 and 3 in writ petition (L) No.32852 of 2024 submitted that the procedure prescribed under the tender document has been followed scrupulously and transparently. The Tender Evaluation Committee (**TEC**) on the

¹ 2024 SCC OnLine SC 1682

² 2024 SCC OnLine Bom 2514

basis of the scrutiny report submitted by the PMC, found that out of four bids, two bids were technically disqualified in terms of the qualification criteria prescribed under the tender document and notice to that effect was uploaded on the website of the Corporation. It is contended that thereafter the final bids of qualifying tenderers were opened and work order was issued on 15th October 2024 to the lowest bidder. It is argued that the contention that the entire process of opening the technical bids and opening of financial bids done on 1st October 2024 is erroneous. It is contended that the Government Resolution dated 27th September 2018 is *per se* not applicable to the Corporation which is a company constituted under the Companies Act, 1956 and it is the Government Company under the control of the State of Maharashtra. It is also pointed out that the Integrity Pact has to be signed by the successful bidder.

14. It is also pointed out that the technical bids of the petitioners have been rejected for non-fulfilling the required qualification contained in the scrutiny report as well as Clause 12 of the NIT which prescribes the eligibility criteria. It is urged that the bidders who participate in the tender process cannot challenge the tender conditions after the bids are opened and the tendering authority is the best judge to decide its requirement. It is also contended that the Tendering Authority, being author of the tender document, is the best person to interpret the terms of the tender document. It is also urged that the scope of judicial intervention with regard to the tender conditions in contractual matter is limited to the extent that the Court only examines the fairness in decision making process and not merits of the decision. It is also argued that, the contention

that the tender condition is tailor-made for a specific bidder is misconceived, as other bidders along with respondent No.5 were held to be technically eligible and bid of respondent No.5 was found to be responsive.

15. In support of his submissions, learned Senior Advocate has placed reliance on the judgments in the case of **Caretel Infotech Ltd. Vs. Hindustan Petroleum Corporation Ltd. & Ors.**,³ **Uflex Limited Vs. Government of Tamil Nadu & Ors.**,⁴, **Agmatel India Pvt. Ltd. Vs. Resoursys Telecom & Ors.**,⁵, **Meerut Development Authority Vs. Association of Management Studies & Anr.**,⁶, **Valentine Maritime Ltd. & Anr. Vs. Union of India, through Secretary, Ministry of Petroleum and Natural Gas & Ors.**,⁷, **National High Speed Rail Corporation Limited Vs. Montecarlo Ltd. & Anr.**⁸

16. Learned Counsel for respondent No.5 has adopted the submissions made by learned Senior Advocate for the Corporation and has placed reliance on the decisions of the Supreme Court in the case of **Air India Ltd. Vs. Cochin International Airport Ltd.**,⁹ **M/s. N.G.Projects Ltd. Vs. M/s. Vinod Kumar Jain & Ors.**¹⁰ and **Adani Ports and Special Economic Zone Ltd. Vs. Board of Trustees of Jawaharlal Nehru Port & Ors.**¹¹

3 (2019) 14 SCC 81

4 (2022) 1 SCC 165

5 (2022) 5 SCC 362

6 (2009) 6 SCC 171

7 2018 SCC OnLine Bom 2937

8 (2022) 6 SCC 401

9 (2000) 2 SCC 617

10 2022 Live Law (SC) 302

11 2022 SCC OnLine Bom 1326

17. The scope of interference of this Court in exercise of powers under Article 226 of the Constitution of India is delineated by catena of decisions of the Supreme Court. It is well settled in law that discretion to grant largesse including award of jobs, contracts, quotas, license and so on must be structured by rational, relevant and non-discretionary standard or norms. If the Government departs from such standard or norms, its action would be liable to be struck down unless the Government can establish that departure was not arbitrary, but was based on some valid principles which in itself was not irrational, irrelevant, unreasonable or discriminatory (See: **Narendra Kumar Maheshwari Vs. Union Of India**¹²)

18. The principles regarding award of contract were reiterated by the Supreme Court in **Director Of Education Vs. Educomp Datamatics Limited**¹³ and it was held that Government must have a free hand in setting the terms of tender and the Courts cannot strike down the terms of tender prescribed by the Government because it feels that some other terms in the tender would have been fairer, wiser or more logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or actuated by malice. In **Shamnit Utsch India Private Limited Vs. West Bengal Transport Infrastructure Development Corporation Limited**¹⁴, the Supreme Court, while taking note of the law laid down in **Assn. of Registration Plates Vs. Union of India**¹⁵, reiterated that the State Government has right to get the right and most competent person and in the matter of

12 1990 (SUPP) SCC 440: (AIR 1989 SC 2138)

13 (2004) 4 SCC 19: (Air 2004 SC 1962)

14 (2010) 6 SCC 303: (2010 AIR SCW 3974)

15 (2005) 1 SCC 679: (AIR 2005 SC 469)

formulating conditions of tender documents, unless the action of tendering authority is found to be malicious and is a misuse of statutory powers, the tender conditions are unassailable.

19. In ***Siemens Aktiengesellschaft and Siemens Limited Vs. Delhi Metro Rail Corporation Limited and Ors.***¹⁶, it was held that the tenders floated by the Government are amenable to judicial review only in order to prevent arbitrariness and favoritism and protect the financial interest of the State and public interest. Thus, the scope of judicial review is confined as to whether there was any illegality, irrationality or procedural impropriety Committed by the decision making authority. It has further been held that the Court cannot sit in appeal over the soundness of the decision made by the competent authority and the Court can only examine whether the decision making process is fair, reasonable, transparent and *bona fide* with no perceptible injury to public interest. In ***Centre for Public Interest Litigation Vs. Union of India***¹⁷ the Supreme Court has held that minimal interference is called for by Courts in exercise of judicial review of a decision taken by the technical experts after due deliberations inasmuch as the Courts are not well equipped to fathom into such domain which is left to the discretion of the executive. It has further been held that primary and secondary purpose of review is to ensure that administrative bodies act in efficient, transparent, fair, unbiased manner and keep in forefront public interest. Similar view has been taken in ***Tangedco Vs. Csepedi – Trishe Consortium***¹⁸ and ***Sam Built***

16 (2014) 11 SCC 288 : (AIR 2014 SC 1483)

17 (2016) 6 SCC 408; (AIR 2016 SC 1777)

18 (2017) 4 SCC 318: (AIR 2016 SC 4879)

***Well (P) Ltd. Vs. Deepak Builders.*¹⁹**

20. It is equally well settled legal proposition that the author of the document is the best person to understand and appreciate the requirements contained in the tender document [See : ***Caretel Infotech Ltd. (supra)***]. It is also equally well settled in law that the Court cannot sit over any judgment on what should be the eligibility criteria in tender notice [see : ***Uflex Limited (supra)***]

21. In the backdrop of the aforesaid settled legal proposition we may now advert to the case in hand.

22. The respondents floated the tender for repair and upgradation of Buildings 1, 2, 5, 7, 16 and Hospital Building at Dadasaheb Phalke Chitra Nagari, Goregaon (East). The time for submission of the bid was between 4th September 2019 to 19th September 2024. Four days' extension was granted for filing the tender and the time for submitting the tender was extended upto 23rd September 2024. A pre-bid meeting was held on 12th September 2024. All the queries raised by the bidders were answered. It is pertinent to note that both the petitioners did not raise any query in the pre-bid meeting. The eligibility criteria prescribed in Clause 12 of the NIT reads as under:

12. Qualification criteria:

To qualify for award of the contract each tenderer in his name should have in the last Five Years i.e. from FY 2018-19 to FY 2022-23 as specified.

19 (2018) 2 SCC 176: (AIR 2018 SC 44).

Sr. No.	Description	Qualification Criteria as Per PWD Norms	Qualification Criteria as PER this Tender/NIT
A to E
F	<i>Bidder should have carried out the following minimum quantities of items of work in any Two Year in last 5 years, in maximum three job. Bidder must submit authorized application letter for maor brands of Materials mentioned in tender.</i>		
Sr. No.	Items	Bidder should have carried out following minimum quantities	
1	Waterproofing	15,000.00 Sqm	
2	Ready Mix Polymer mortar	50,000 kg	
3	External Anti Carbonation Painting	50,000.00 Sqm	
4	Injection Grouting	15,000 kg	
5	Epoxy Painting	90,000 sqft	
6	Tile work	2,670 sqmt.	
7	Guniting Work	3,700 sqmt.	
8	Micro concrete	50,000 kg	
Note : - Certificate of Minimum quantity item work is mandatory.			

23. Statement VI appended to Clause 12F prescribes the quantity of work executed in last five years i.e. 2018-2019 to 2022-2023. The Statement VI is extracted below for the facility of reference:

Statement No.VI
Statement showing quantities of work executed in during last Five Years
(i.e.2018-19, 2019-20, 2020-21, 2021-22, 2022-2023)

Sl. No	Name of the work	Year	Micro concrete	Plastering work	Water-proofing	Ready Mix Polymer mortar	Painting work	Hydrophobic Injection Grouting	Epoxy Painting	Tile Work	Guniting Work	Remarks* (indicate concrete reference)
			50,000 kg	7,000.00 Sqm	12,000.00 Sqm	50,000 kg	40,000 Sqm	15,000 kg	5000 sqmt	20,000 sqmt.	3700 sqmt.	
1	2	3	4	5	6	7	8	9	10	11	12	13
		2018-19										
		2019-20										

		2020-21									
		2021-22									
		2022-23									
		Total									

Note 1 : Details are to be uploaded in this format in envelope -1 duly signed.

24. The aforesaid Statement-VI was revised as per the pre-bid meeting held on 12th September 2024 and the quantities of work executed in the last five years was reduced. The revised Statement-VI reads as under:

Statement No.VI
Statement showing quantities of work executed in during last Five Years (2020-2024)

Sl. No.	Name of the work	Year	Water-proofing	Ready Mix Polymer mortar	External Anti Carbonation Painting	Injection Grouting	Tile Work	Guniting Work	Micro Concrete	Remarks * (indicate ref)
			1005 sq.mtr.	1355 sq.mtr.	20020.00 sq.mtr.	25 kg	1364 sqmt.	3700 sqmt.	115000 kg	
1	2	3	4	5	6	7	8	9	10	11
		Total								

25. The technical bids were opened on 23rd February 2024 and a total four bidders uploaded their tenders viz. (i) Painterior Protective System LLP, (ii) Shandar Interiors Pvt. Ltd. (iii) Dev Engineers and (iv) Mahendra Realtors & Infrastructure Ltd. On 24th September 2024 uploaded documents were forwarded to the PMC appointed by the Corporation.

26. The Corporation, on receipt of the scrutiny report, by email dated 25th September 2024 informed the bidders including the petitioners about short-fall observed in their bids. The bidders were asked to submit the said short-fall documents on 27th September 2024. The petitioner – Mahendra Realtors &

Infrastructure Ltd., on 25th September 2024 sent a letter to the Deputy Engineer of the Corporation seeking technical bid documents of all the bidders. The bidders including the petitioners, on 26th September 2024 submitted short-fall documents which were sent again to the PMC. The PMC, on 30th September 2024 submitted a final scrutiny report. The Tender Acceptance Committee of the Corporation, on 1st October 2024, verified the scrutiny report and examined the issue of qualification of technical bids on the basis of qualifying criteria prescribed in clause 12 of the tender document. The technical bids of both the petitioners were found to be non-responsive. The relevant extract of final scrutiny report dated 30th September 2024 submitted by PMC which was accepted by the Tender Acceptance Committee reads as under:

With regard to petitioner in WPL/32013/2024 – Mahendra Realtors & Infrastructure Ltd.

Clause No. of the Tender <i>(Exh-A/pg.39-563 of the WP)</i>	Scrutiny Report <i>(Exh-E) pg 578-584 of the WP)</i>
Clause 7.1(12F)/- Guniting work-pg 53 of Tender requires a Bidder to submit details of work done using the 8 items in the referred minimum quantities in any two years in the last five years in maximum three jobs.	Sr.No. 12/@pg 581 -The Petitioner has submitted details of four jobs / works carried out by the Petitioner. The Petitioner has not met the requirements of Clause 12 F of having used the 8 items in minimum quantities in maximum three works. The Petitioner has submitted the 4 th work to meet the requirement of Guniting Work of Clause 12F of the Tender, which has rightly not been considered and therefore the Technical Bid of the Petitioner was rejected.
Clause 7.1 12(F)(3) – External Adnti-Carbonation Painting <i>Clause 7.1 12 (F)(3) of the tender</i>	The Petitioner has not submitted details of having used External Anti-Carbonation Painting.

<p><i>Document stipulates that anti-carbonation paint should be used by the Bidder</i></p>	<p><i>The Petitioner has submitted specifications for heritage-type paint which does not meet the Tender requirement and hence the Petitioner's Bid has been rejected</i></p>
<p>Sr. No. 7.1 12(F)(6) – Tile Work <i>Clause 7.1 (12)(F)(6) of the Tender Document stipulates that the Petitioner is required to undertake Tile Work of a minimum quantity of 2,670 Mtrs.</i></p>	<p><i>The Petitioner has failed to provide a clear statement of quantities executed from 2018-2020 and further no clear statement is attached that billed quantities have been worked in the year 2020.</i></p> <p><i>Since the exact time period of when the Petitioner had performed this job is unclear, it cannot be taken into consideration as a valid work done/compliance as per Clause 7.1 12 (F)(6) of the Tender Document @ pg 53 of the Writ Petition.</i></p>
<p>Clause 7.1 (12)(F)(8) – Micro Concreting Work <i>Clause 7.1 12(F)(*) of the Tender Document stipulates that the Petitioner is required to undertake Micro Concreting Work of a minimum quantity of 50,000kg.</i></p>	<p><i>The Petitioner has failed to provide a clear statement of quantities executed from 2018-2020 and further no clear statement is attached that billed quantities have been worked in the year 2020.</i></p> <p><i>Since the exact time period of when the Petitioner had performed this job is unclear, it cannot be taken into consideration as a valid work done/compliance as per Clause 7.1 12(F)(8) of Tender.</i></p>
<p><i>Under the Tender the Petitioner was required to submit copies of Signed Bills/Final Bill Copy</i></p>	<p><i>The Petitioner has failed to provide signed bills/Final Bill Copy for details of work done for Project No.2 and Project NO.3 @ pg 582.</i></p>
<p>Clause 7.1(12C) <i>of the Tender requires a Bidder be Financially Solvent and demonstrate Financial Solvency (Pg 52 of Tender/WP) and further is a Bidder does not demonstrate his ability, the technical Bill is liable to be rejected.</i></p> <p><i>As per this Clause the Bidders are required to be financially solvent/or demonstrate their credibility of liquidity to execute the contract in the specific timeframe.</i></p>	<p><i>The Petitioner has failed to submit the required details as per Clause 7.1 (12C)</i></p> <p><i>The Bar Chart submitted by the Petitioner is insufficient and does not accurately reflect the sequence of activities required for the project and hence the Petitioner's Bid has been rejected.</i></p> <p><i>Further the CA Certificate submitted by the Petitioner did not explicitly state that the bidder is financially</i></p>

	<i>solvent. CA Certificate did not have a clear demonstration of the bidder's financial stability and liquidity to fulfil the contract within the specified timeframe. Thus the Petitioner has failed to comply with Clause 7.1 (12C)/pg 52 of the Writ Petition.</i>
<p>Clause 7.1 (12-G1) – TDS certificate.</p> <p><i>Clause 7.1(12-G1) of the Tender stipulates that the Petitioner is required to submit a Scanned Copy of the Turnover certificate for last five years signed by Chartered Accountant having valid UID No. along with copy of TDS certificate and ITR copies with CA signed Balance Sheet/Profit Loss statement.</i></p>	<p><i>It can be seen from this entry that the Attached Balance Sheet and TDS Certificate are not clear and not visible.</i></p>
<p>Clause 17(f) Pre Litigation History</p> <p><i>Clause 17(f) of the Tender stipulates that Bidders with prior history of contract litigations/bid withdrawal/ holiday listing/ black listing with government and semi government agencies are required to submit details of the same. If Bidders fail to submit true and satisfactory explanations of the same the Technical Bid is liable to rejection.</i></p>	<p><i>The submitted litigation History revealed that the Petitioner had incurred losses in previously executed projects. This finding was in contravention to Clause 7.1(12C) of Tender which stated that the Contractor should not have suffered any losses in the previous projects. Further the existence on ongoing Litigation revealed that the Contractor is pursuing these claims which raised significant concerns regarding the Petitioner's ability to comply with contractual requirements.</i></p>

With regard to petitioner in WPL/32852/2024 – Dev Engineers:

Clause No. of the Tender	Scrutiny Report (Exh-E/pg 71-77 of the WP)
<p>Clause 16.1 – Pg 57 of Tender requires a Bidder to submit a Memorandum as provided on Page Nos. 53 to 55 of the Tender Document</p>	<p>Sr.No.6/@ pg.71 – "MEMORANDUM – Not Available"</p> <p>Note : The Petitioner has failed to provide the Memorandum in the Technical Bid which is a mandatory requirement.</p> <p>The Petitioner states that the Memorandum is not applicable to the Petitioners as it is a partnership firm.</p>

	<p>However, the petitioner has misconstrued that the Memorandum specified in the scrutiny means a Memorandum of Association when in fact the requirement was of a Memorandum as provided on Page No.53 to 55 of the Tender Document.</p>
<p>Clause 7.1 (12)(B),(E) and (G3) – Similar Work Completion – Pg 51 & 53 <i>Clause 7.1 12 (B) of the Tender states work shall be done of similar nature in the last 5 years having minimum cost as follows:</i> <i>(a) One Work – Rs.40.76 Crores</i> <i>(b) Two Work – Rs.30.57 Crores each work</i> <i>(c) Three Work – Rs.20.38 Crores each work</i></p> <p><i>Clause 7.1 (12)(E) provides for the definition of Similar Works</i></p> <p><i>Clause G3 states that the evaluation of similar work shall only be done with the help of three documents i.e. Work Order, Completion Certificate & TDS Certificate depicting the same cost. Non-uploading of Work Order copy of TDS Certificate along with Completion Certificate liable to reject the Technical Bid unconditionally without any further clarification.</i></p>	<p>Sr.No.9/@Pg 72 – "No Work Orders or TDS Certificates have been submitted for the six jobs listed. As per Tender Conditions Clause G3 Page No.15-Evaluation of Similar work Completion Cost shall only be done with the help of these three G3 documents (i.e. TDS certificate depicting the same cost) Non-Uploading Work Order copy or TDS certificate along with Completion Certificate liable to reject the Technical Bid unconditionally without any further Clarification. The absence of either the Work Order Certificate renders the technical bid liable for unconditional rejection without further clarification. Page no.105 to 112"</p> <p>Note : The Petitioner has failed to submit Work Orders and TDS Certificates of the Work done in his tender.</p> <p><i>Non-uploading of Work Order copy and TDS Certificate along with Competition Certificate makes the petitioner's bid liable to be rejected unconditionally without any further clarification as per Clause G3.</i></p> <p><i>The TDS Certificate is important to ascertain that the similar work done is of the same cost.</i></p>
<p>Clause G8 & Statement No.V – Pg 54 of Tender requires the Bidder to submit the Details of work executed in all classes of repairs along with Work Order copy, Completion / Final Bill copy & TDS Certificate.</p>	<p>Sr. No.11/@ Pg.73 – "Submitted, Pg no.130 to 149 TDS Completion / Final Bill Copy & TDS certificate need to be submit".</p> <p>Note: The petitioner has failed to submit the Work Order and TDS Certificate along with Statement No.V.</p>

<p>Clause 7.1(12F)/ - Guiniting work – pg. 53 of Tender requires a Bidder to submit details of work done using the 8 items in the referred minimum quantities in any two years in the last five years in maximum three jobs.</p> <p>Guiniting Work – 3700 sqmt.</p>	<p>Sr. No.12/@ Pg 74 – "Max three jobs only allowed for qualification. Construction experience is not qualified for this job. Quantities executed should be in any Two years of last five years. 2018-2019 does not qualify for this job. Page No.150 to 258".</p> <p>"22,000 Sqmt (Quantities not available) (This is not Guiniting Work).</p> <p>Note : The petitioner has submitted details of four jobs/works carried out by the petitioner.</p> <p>The petitioner has not met the requirements of Clause 12F of having used the 8 items in minimum quantities in maximum three works.</p> <p>The petitioner has submitted the 4th work to meet the requirement of Guiniting Work of Clause 12F of the Tender, which has rightly not been considered and therefore the Technical Bid of the petitioner was rejected.</p>
<p>Clause 7.1(12)(C) of the Tender requires the Bidder to be a well-established contractor having at least 10 years of experience and capability in planning and construction of retrofitting and/or renovation projects.</p>	<p>Sr.No.13/@ Pg.75 – "The Company Registration Certificate indicates a date of incorporation of 16 May 2018. However, the contractor has submitted experience documents claiming a duration of 10 years, referencing projects from 2004. This discrepancy is inconsistent with eligibility criteria, as the claimed experience period does not match with the company's registered duration. Page no.17"</p>
<p>Clause 7.1(12)(G12) of the Tender requires the Bidder to submit signed copy of all the Tender documents along with all pre-bid queries Clarifications/ Addendum</p>	<p>Sr.No.22/@Pg 77 - "The signed copy of the tender document is missing from the submission. As stipulated in Clause G12 on Page 16 of the tender requirements, this document is mandatory. The absence of the signed tender document may result in disqualification of the submission. Not available.</p>

	Note: <i>the submission of the signed tender document by uploading it is critical since without such a document there is not even a submission of the Tender. In this case, the Petitioner did submit a hard copy of the signed Tender document subsequently, however, the same does not cure the defect the cure of uploading/submitting a signed copy of the Tender document.</i>
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27. Thus, from perusal of the aforesaid relevant extract, it is evident that the PMC has examined the validity of the technical bids on the touchstone of the qualifying criteria prescribed under clause 12 of the tender document. The petitioners do not fulfill the qualifying criteria laid down in Clause 12 of the tender document. The author of the tender document, viz. the Corporation is the best person to understand and appreciate its requirements. The technical bids of the petitioners have been found to be non-qualifying for valid and cogent reasons. This Court, in exercise of power of judicial review, cannot sit in an appeal over the correctness of the decision made by the Tender Acceptance Committee. The time-line prescribed in the NIT have been adhered to and the procedure adopted by the Corporation appears to be fair, reasonable and transparent.

28. The decision taken by the Tender Acceptance Committee was uploaded on 1st October 2024. The petitioner viz. M/s. Mahendra Realtors & Infrastructure Ltd. downloaded the decision of the Tender Acceptance Committee on 2nd October 2024 whereas the petitioner Dev Engineers downloaded the same on 18th October 2024. As per the tender schedule, the financial bids of only technically qualified tenderers were opened in presence of the bidders or their authorized representatives. The financial

bid of Painterior Protective System LLP was found to be lowest one. Thereafter, on 15th October 2024 the work order was issued in favour of respondent No.5 – Painterior Protective Systems LLP being lowest bidder.

29. In so far as the contention of the petitioners that the bids were opened on 1st October 2024 after office hours without any prior intimation as well as the contention that the reason for disqualification of the bid of the petitioners have not been communicated to it till today, is factually incorrect. The tender schedule mentioned in the tender document has been adhered to. The petitioners have downloaded the decision of the Tender Acceptance Committee on 2nd October 2024 and 18th October 2024. Similarly, the contention that the NIT has been issued in violation of the Government Resolution dated 27th September 2018 is concerned, suffice it to say that the aforesaid Government Resolution is applicable to the works executed by the Public Works Department and is not applicable to the Corporation which is a company registered under the Companies Act and functioning under the control of the State of Maharashtra. The contention that the alleged conditions in the NIT have been prescribed to favour only respondent No.5, is misconceived, as other bidders along with respondent No.5 were held to be technically eligible. The Integrity Pact has to be executed by the bidder which forms part of the agreement. The said Pact shall be signed by the successful bidder viz. respondent No.5. It is a well settled legal principle that no relief at the instance of a party which does not fulfill the requisite criteria can be granted in exercise of writ jurisdiction (see: ***Raunaq International Ltd. Vs. IVR Construction Ltd***).²⁰

²⁰ ***1999(1) SCC 492***

30. Thus, from the above narration of facts, it is evident that the decision taken by the Corporation neither suffers from any illegality, irrationality or procedural impropriety and cannot be termed as malicious and does not tantamount to misuse of statutory power.

31. In view of the preceding analysis, we do not find any merit in the writ petitions. The same fail and are hereby dismissed.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)