



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

**WRIT PETITION (L) NO. 15216 OF 2025**

Larsen & Toubro Limited, a company ]  
incorporated in India, and having its ]  
registered office at L&T House, Ballard ]  
Estate, Mumbai 400 001. ] ... Petitioner.

**V/s.**

1. Mumbai Metropolitan Region Development Authority (MMRDA), a statutory body under the Mumbai Metropolitan Development Act, 1974, having its office at Plot No.14 & 15, MMRDA New Building, BKC, Bandra (E). ]
2. Engineer-in-Chief/Chief Engineer Engineering Division, Mumbai Metropolitan Region Development Authority (MMRDA), having his office at 2<sup>nd</sup> Floor, New Office Building Plot No. R005, R-06 & R-12, 'E' Block, Bandra Kurla Complex, Bandra (E), Mumbai Maharashtra, INDIA – 400 051. Email: [chiefengineer1@mailmmrda.maharashtra.gov.in](mailto:chiefengineer1@mailmmrda.maharashtra.gov.in) ] ... Respondents

Mr. Janak Dwarkadas, Senior Counsel a/w Mr. Zal Andhyarujina, Senior Counsel, Adv. Ativ Patel, Adv. Viloma Shah, Mr. Harshad Vyas, Mr. Pawan Kulkarni and Mr. Viraj Raiyani, i/by M/s AVP Partners for the Petitioner.

Mr. Tushar Mehta, Solicitor General of India and Mr. Mukul Rohatgi, Senior Counsel a/w Mr. Chirag Mody, Adv. Anjan Dasgupta, Adv. Rimali Batra, Adv. Prachi Garg, Adv. Prerna Verma, Adv. Abhishek Lalwani and Adv. Sayalee Dolas, i/by DSK Legal for the Respondent.

Mr. Yatin Sakhalkar, representative of MMRDA.

**CORAM : KAMAL KHATA AND  
ARIF S. DOCTOR, JJ.**

**RESERVED ON : 15<sup>th</sup> May, 2025.  
PRONOUNCED ON : 20<sup>th</sup> May, 2025.**

**PC:-**

- 1) The Petitioner has preferred the present Writ Petition seeking urgent restraining Orders against Respondents-MMRDA to prevent opening of Cover-II which contains the financial bids for the Road Tunnel Project, on 13th May 2025 at 11.00 am scheduled without first notifying the Petitioner of the fate of the Petitioner's Technical bid.
- 2) Respondent No. 1 (**"MMRDA"**) had on 27<sup>th</sup> July 2024 issued a notice inviting public infrastructure projects namely, (i) Road Tunnel Project with tender reference no. MMRDA/Tunnel Gaimukh to Fountain/2024 (Tender ID 2024\_MMRDA\_1061485\_1 for the Design & Construction of underground road tunnel from Gaimukh to Fountain Hotel Junction on Thane Ghodbunder Road (**"said Project"**)). The said Project envisages 5km long twin tunnels of finished diameter of 14.6m estimated at approximately INR 8,000 Crores, which is an extension of the Mumbai Coastal Road project and a part of the MMRDA's larger road expansion project involving construction of approximately 15 km of road from Gaimukh in Thane to Bhayander.
- 3) The Petition avers that Petitioner is a reputed Indian multinational conglomerate and one of the foremost multinational construction companies in India and abroad, who has successfully executed many projects of national and international significance. MMRDA is a statutory body under the Government of Maharashtra and a 'State' within the

meaning of Article 12 of the Constitution of India.

- 4) The Petitioner is one of the bidders for the said Project and had on 13th December 2024 submitted its technical bid, which was opened on 1st January 2025. Since then, the Petitioner has been awaiting the outcome of the evaluation of the technical bid. Recently, the Petitioner learnt that MMRDA had addressed letters to some bidders to remain present for the opening of the financial bid on 13th May 2025. Since the Petitioner had not received any intimation from MMRDA either by an email communication or on its portal, they addressed a letter dated 12th May 2025 and requested MMRDA to confirm whether the financial bid was indeed being opened on 13th May 2025 at 11.00 am. The letter also clarified that the Petitioner would be constrained to proceed on the basis that MMRDA would open the bid on 13th May 2025, contrary to the terms of the tender documents and in violation of the principles of natural justice.
- 5) The Petitioner, however, did not receive any intimation from MMRDA calling upon the Petitioner to either remain present for the opening of Cover-II of the bid or to the effect that the Petitioner's technical bid had been found to be non-responsive. The Petitioner, however, learnt that some of the bidders had received an intimation from MMRDA that financial bids would be opened on 13th May 2025 at 11.00 am and at which time the said bidders were to be present. The Petitioner apprehends that MMRDA will proceed to open the financial bids of other bidders to its

exclusion, contrary to the fair and transparent tender process that MMRDA must follow. Since they did not receive any response, they were compelled to file the present Petition on 13th May 2025.

6) The Petition further avers that MMRDA, being a public authority, is bound to act in a non-discriminatory, fair, and transparent manner. It is bound to intimate the Petitioner about the outcome of the evaluation of its technical bid before the financial bids are opened. The decision to open the financial bids in the absence of the Petitioner without intimating them of the outcome of the evaluation of its technical bid is discriminatory and arbitrary and in violation of the principles of natural justice. It has serious consequences of depriving the Petitioner of its valuable constitutional rights, including to carry on trade and business and to protect and safeguard its legal entitlements under the tender process. Under these circumstances, it is requested that MMRDA be restrained from opening the financial bids until such time that the Petitioner is informed that its technical bid has been declared non-responsive.

7) Mr. Dwarkadas, Learned Senior Counsel appearing on behalf of the Petitioner, invited our attention to Clauses 27.7 and 27.8 of Volume I of the tender documents, i.e., the Instructions to Bidders document (“*ITB*”) at page 46 of the Petition, which he pointed out provide as follows :

*“27.7 At the end of the evaluation of Technical Bids, the Employer will invite Bidders who have submitted substantially responsive*

*Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. The opening date should allow Bidders sufficient time to make arrangements for attending the opening.*

*27.8 The Employer will notify, in writing, Bidders who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Documents and return their Bid security and Price Bids unopened”.*

8) Placing reliance on the above, Mr. Dwarkadas submitted that it was therefore abundantly clear that the MMRDA had to notify, in writing, those bidders whose Technical Bids were substantially non-responsive and return to them the bid security along with their unopened price bids before proceeding to the next stage, i.e., opening of the financial bids. He submitted that absent first declaring the Petitioner’s technical bid as non-responsive, the Petitioner would also have a right under the ITB to be present when the financial bids were opened. He submitted that failure on the part of MMRDA to ensure the presence of the Petitioner at the time of opening the financial bids without declaring the Petitioners technical bid as non-responsive would not only be patently arbitrary and discriminatory but also plainly contrary to clauses 27.7 and 27.8 of the ITB and would give the other bidders an unfair advantage over the Petitioner.

9) Mr. Dwarkadas then drew our attention to the guidelines dated 27<sup>th</sup> September, 2018, issued by the Public Works Department, Government of

Maharashtra (“**PWD Guidelines**”), and highlighted Clause 4.1. He pointed out that the PWD Guidelines cast an obligation on the tendering authority to communicate to the bidders a list of qualification/disqualification after opening of the technical bids and to publish the same on the web/portal on which the e-tender process was being carried out. He further pointed out that the PWD Guidelines also provided that the disqualified bidders would be intimated about their disqualification along with the reasons and also be provided a hearing after the opening of their technical bid. Mr. Dwarkadas clarified that at this stage the Petitioner was neither seeking the reasons nor a hearing but was only seeking an intimation from MMRDA as to whether the Petitioner’s technical bid had been held to be non-responsive and if not, why the Petitioner was not invited for the opening of the financial bid.

10) Mr. Dwarkadas then referred to the Central Vigilance Commission’s guidelines dated 24th March 2005 (Office Order No. 15/3/05) (“**CVC Guidelines**”), from which he pointed out that the tendering authority was bound to record clear, logical reasons for the rejection of bids notwithstanding any clauses to the contrary in the notice inviting tenders.

11) Mr. Dwarkadas then submitted that the very object of the CVC Guidelines was to avoid any arbitrary action on the part of the tendering authority at the stage of technical evaluation. He then placed reliance upon the judgement of the Hon’ble Supreme Court in **Haffkine Bio-**

***Pharmaceutical Corporation Limited V/s. Nirlac Chemicals & Ors***<sup>1</sup> to submit that if the financial bids were opened without intimating the Petitioner of the fate of its technical bid, the entire tender process would stand vitiated as being in violation of the CVC Guidelines. He then also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Surendra Infrastructure (P) Ltd. V/s. State of Maharashtra***<sup>2</sup> to submit that, as noted therein, the PWD Guidelines would even be applicable in the present case. He further submitted that the procedure laid down in the CVC and the PWD Guidelines was to ensure a fair and transparent tendering process since the opportunity to participate in a commercial tender floated by the State was a constitutional right under Article 21 of the Constitution of India.

12) Mr Dwarkadas thus submitted that the State was therefore bound to ensure a 'level playing field' and transparency and fairness through every stage of the tendering process in the larger public interest. He submitted that if the policy or act of the State or its Authorities fails to satisfy the test of reasonableness, then such an act or decision would be unconstitutional. To substantiate his contention, he placed reliance upon the Judgments of the Supreme Court in the case of ***Reliance Energy Ltd. & Anr. V/s. Maharashtra Road Development Corporation Ltd.***<sup>3</sup> and the decision in the

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1 (2018) 12 SCC 790

2 2024 SCC Online Bom 2908

3 (2007) 8 SCC page 1

case of *Food Corporation of India V/s. Kamdhenu Cattle Feed Industries*<sup>4</sup> to submit that the State and all its instrumentalities have to conform to Article 14 of the Constitution of India and thus act in a non-arbitrary, fair and transparent manner. He submitted that the duty of the State to act fairly in the discharge of its obligations was a part of good administration and governance.

13) Mr. Dwarkadas then also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of *Konkan Railway Corporation V/s. Union of India*<sup>5</sup> to submit that the primary objective of a public tender was to maximise competition. He thus submitted that, in order to achieve this objective, a bidder whose technical bid was rejected had the right to know the reasons on which such a bid was rejected in order to seek judicial review and have such disqualification set aside if the same was arbitrary and failed to satisfy the test of reasonableness. He submitted that this opportunity was lost to the Petitioner since MMRDA had failed to intimate the Petitioner that its technical bid had been declared non-responsive and thus deprived the Petitioner of an opportunity to challenge the same. This, he submitted, would cause irreversible loss and grave prejudice to the Petitioner.

14) Basis the above, Mr. Dwarkadas submitted that it was incumbent upon MMRDA not to exclude the Petitioner at the opening of the financial

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4 (1993) 1 SCC page 71

5 2025 SCC OnLine Bom 612



bids.

15) *Per contra*, Mr. Mukul Rohatgi, Learned Senior Counsel appearing on behalf of the MMRDA, at the outset submitted that the Petition deserved to be dismissed with costs, since the Petitioner was guilty of wilful and deliberate suppression. In support of his contention, he invited our attention to clauses 28.1 and 42.5 of the ITB, which he pointed out provided thus:

*“28.1 Information relating to the evaluation of Bids and recommendation of Contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders in accordance with ITB 42.”*

*42.5 After notification of award, unsuccessful Bidders may request, in writing, to the Employer a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond, in writing, to any unsuccessful Bidders who, after the notification of award in accordance with ITB 42.1, request a debriefing.”*

16) He pointed out that the above clauses of the ITB itself made explicitly clear that the information regarding the evaluation of bids shall not be disclosed to the bidders until information on award of the contract was communicated to all the bidders. He submitted that not only had the Petitioner accepted the above clauses but had deliberately suppressed the same from the Petition. He submitted that it was incumbent upon the

Petitioner to have disclosed the said clauses and then have explained as to how, in light of the said clauses, the Petitioner could at this stage resist the opening of the financial bids solely on the ground that the Petitioner had not been intimated that the Petitioner's technical bid had been declared non-responsive. He thus submitted that since the Petitioner had failed to do so and, on the contrary, suppressed the said clauses, the Petition deserved to be dismissed on this ground alone.

17) Mr. Rohtagi then submitted that one who approaches the Court must do so with clean hands and must disclose all material facts without any reservation, even if the same are against such a party. In support of his contention, he placed reliance upon the judgements of the Hon'ble Supreme Court in the case of *K.D. Sharma vs Steel Authority of India Limited & Ors*<sup>6</sup> to submit that if the applicant does not disclose all the material facts fairly and justly, but states them in a distorted manner, this Court has the inherent power to prevent abuse of its process and refuse to proceed further with the case on examination on merits.

18) Mr. Rohatgi then without prejudice to the above, submitted that the decision of the Hon'ble Supreme Court in the case of *National High Speed Rail Corporation V/s. Montecarlo Ltd. & Anr.*<sup>7</sup> would apply on all fours to the facts of the present case. He pointed out that clauses 28.1 and 42.5 of the ITB in the present case were identical in terms to the clauses which fell

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6 (2008) 12 SCC 481

7 (2022) 6 SCC 401

for consideration in the case of **Montecarlo Ltd.**, in which the Hon'ble Supreme Court, when construing the said clauses, *inter alia*, held as follows:

*“43.2. The purpose of the aforesaid clauses appears to be to prevent a possible challenge to the multiple stage tender process midway. The High Court has construed that the said clauses would restrict the right of the bidders to seek judicial scrutiny of the tender process. However, the High Court does not seem to be wholly true. The High Court ought to have appreciated that first of all Clause 28 is a confidentiality clause. On general reading of the aforesaid two clauses, it can be said that it does not take away the right of the bidders to seek judicial scrutiny at all. Only the stage and time to know the reasons and thereafter if the unsuccessful bidder is aggrieved, can seek the remedy, which is deferred till the final decision on award of contract is taken and communicated.”*

19) Mr. Rohatgi submitted that like in the case of **Montecarlo** the said Project was also a Mega infrastructure project of vital public importance and thus bearing in mind the significant public interest, were required to be completed expeditiously and with minimal interference.

20) The Learned Solicitor General then, in addition to what Mr. Rohatgi had submitted, assured the Court that the Petitioner would be given the reasons for the rejection of its technical bid in the manner and stage as provided in clause 42.5. He also gave the same assurance as given in Writ Petition (L) No. 15215 of 2025, namely that MMRDA would notify

regarding the award of the contract to unsuccessful bidders and would furnish to the Petitioner the reasons for rejection of its technical bid. He further specifically clarified that it would be open for the Petitioner to impugn the same, including by filing a Writ Petition. He further clarified that even after the declaration of the successful bidder, all rights and contentions of the Petitioner, including the challenge to the award of the contract, would be kept open and that MMRDA would not take a defence that the Petitioner would only be relegated to a Suit for damages. He thus submitted that the Petition being one which was entirely lacking in merit deserved to be dismissed, as any delay in the opening of the financial bid would have grave implications on the progress of the said Project which would affect the public at large and also imperil the project itself.

21) In the aforesaid backdrop, the short question which arises for our consideration is whether the Petitioner is justified in contending that the conduct of MMRDA in proceeding to open the financial bids without first declaring the Petitioner's technical bid as unresponsive is contrary to the terms of the tender.

22) We have heard Learned Senior Counsel and perused the papers, particularly the terms of the ITB, and after doing so, find that we are unable to entertain the present Writ Petition for the following reasons:

A. The Petitioner's case was entirely premised upon a reading of clauses 27.7 and 27.8 of the ITB, and infact, it is only an extract of those clauses

which has been appended to the Writ Petition at Exhibit D. The submissions advanced by Mr. Dwarkadas were also based entirely on these clauses. We find that the Petition is entirely silent on clauses 28.1 and 42.5, which in terms set out that information relating to the evaluation of bids shall not be disclosed till such time as the notification of the award. In our view, it was incumbent upon the Petitioner to have set out the said clauses and explained why the same were not applicable. The Petitioner has admittedly not done so, and thus we find much merit in the submission of Mr. Rohatgi that the Petitioner is guilty of suppression of a material fact.

**B.** It is well settled that the party who invokes the extraordinary jurisdiction of this Court is supposed to be truthful, frank and open and must necessarily disclose all the material facts without any reservation, even if they are against such party. It is not open to a Party who seeks equity to play “*hide and seek*” or to “*pick and choose*” certain facts and to suppress and/or conceal other facts. These principles are categorically laid down by the Hon’ble Supreme Court in the case of ***K.D. Sharma*** (*supra*). In the present case, as already noted above, the Petitioner has entirely suppressed clauses 28.1 and 42.5 of the ITB from the Petition.

**C.** Though, we prima facie find merit in the contention of Mr. Dwarkadas that the tender conditions are not in conformity with the ITB and CVC guidelines explicitly provide that MMRDA shall, after notification of the award of the contract and upon receiving a request from the unsuccessful

bidder, provide to the unsuccessful bidder reasons for its disqualification. The Petitioner having accepted clause 28.1 and 42.5 of the ITB, cannot at this stage assert a right which is contrary to the express terms of the tender or seek to interpret the terms of the tender in a manner which is contrary to the interpretation placed by MMRDA. Further, in light of the Learned Solicitor General's statement as recorded in paragraph 20 it would be open to the Petitioner to raise all these contentions once the reasons for the rejection of the technical bid are made available to the Petitioner as per the ITB. Thus, in the facts of the present case, the Petitioner's reliance on the judgements in *Haffkine Bio-Pharmaceutical Corporation Limited*, *Surendra Infrastructure (P) Ltd.*, *Reliance Energy Ltd. & Anr.*, *Food Corporation of India*, and *Konkan Railway Corporation* would be of no assistance at this stage.

D. Another factor which we must be mindful of is that the said project is a mega-infrastructure project of significant public importance. Thus, any delay of the same would adversely impact the execution of the project, which is admittedly of public importance. Conversely, no prejudice whatsoever would be caused to the Petitioner if all rights and contentions of the Petitioner are kept open to challenge the rejection of the Petitioner's technical bid as well as the award of the contract. The rights of the Petitioner would remain intact, as opposed to the grave prejudice that would be caused in the case of any delay to the project. We find no merit in

the Petitioner's contention that there has been delay on the part of MMRDA, since the technical bids were submitted in January 2025 and have only been evaluated now. Given the magnitude of the project, such evaluation would take time. Also, even assuming there has been a delay on the part of MMRDA, that itself does not mean that the project can be further delayed pending consideration of a challenge, which it is made expressly clear can be raised after the award of the contract.

23) Accordingly, the interim stay on the opening of the financial bids is discontinued forthwith.

24) Hence, for the aforesaid reasons, the Petition is dismissed. There shall be no order as to costs.

(ARIF DOCTOR, J.)

(KAMAL KHATA, J.)

25) After pronouncement of Judgment, Mr. Dwarkadas submits that price bids submitted electronically should be preserved till the communication of the Award as per the ITB clauses.

26) This being a fair request is granted and not being opposed by learned Solicitor General. The MMRDA is directed to preserve the price bids for two weeks from the date of communication to the Petitioner.

(ARIF DOCTOR, J.)

(KAMAL KHATA, J.)