



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3079 OF 2025

M/s Watergrace Products
Through its proprietor
Shri. Chetan Prithviraj Bora
Near Kannamwar Bridge,
Mumbai-Agra Road, Dwarka,
Nashik – 01.

...Petitioner

Versus

1. Municipal Corporation of
City of Jalgaon
Through its Commissioner,
Municipal Corporation of City of Jalgaon
Sardar Vallabhbhai Patel Tower,
Administrative Building, M.G. Road,
Nehru Chowk, Jalgaon, Maharashtra
2. The Deputy Commissioner (Public Health)
Public Health Department
Municipal Corporation of City of Jalgaon
Sardar Vallabhbhai Patel Tower,
Administrative Building, M.G. Road,
Nehru Chowk, Jalgaon, Maharashtra
3. BVG India Ltd.,
Having its registered office at
BVG House, Premier Plaza,
Pune-Mumbai Road,
Chinchwad, Pune – 411 019.
and having its corporate office at
Midas Towers, 4th Floor,
Rajiv Gandhi Infotech Park, Phase-1
Hinjewadi, Pune – 411 057.
4. Global Waste Management Cell Pvt. Ltd.
20/21, 1st Floor, 10 Atul Niwas,
Khetwadi Lane, Mumbai,
Maharashtra – 400 004.

5. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 001. ...Respondents

WITH
WRIT PETITION NO. 2183 OF 2025

BVG India Limited
Having its registered office at
BVG House, Premier Plaza,
Pune-Mumbai Road,
Chinchwad, Pune – 411 019.
and having its corporate office at
Midas Towers, 4th Floor,
Rajiv Gandhi Infotech Park, Phase-1
Hinjewadi, Pune – 411 057. ...Petitioner

Versus

1. Municipal Corporation of
City of Jalgaon
Through its Commissioner,
Municipal Corporation of City of Jalgaon
Sardar Vallabhbhai Patel Tower,
Administrative Building, M.G. Road,
Nehru Chowk, Jalgaon, Maharashtra
2. M/s Watergrace Products
2R22+6VJ, Kathda,
Nashik, Maharashtra – 422 001.
3. Global Waste Management Cell Pvt. Ltd.
20/21, 1st Floor, 10 Atul Niwas,
Khetwadi Lane, Mumbai,
Maharashtra – 400 004.
4. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 001. ...Respondents

- Dr. Abhinav Chandrachud a/w Mr. R. S. Kohli, Mr. V. R. Chavan, Mr. Yogendra M. Kohli i/b M/s C. K. Legal, Advocates and Consultants & Ms. Supriya Gandhi-Bora (Through V.C.), for the Petitioner in WP/3079/2025.
- Mr. Karan Bhosale a/w Ms. Neha Bhosale, Ms. Laveena Tejwani, Mr. Abdul Kudalkar, Mr. Harsh Savant i/b NDB Law/ Majit Shaikh (Through V.C.), for Petitioner in WP/2183/
- Mr. Rajendrraa Deshmukh, Senior Counsel a/w Mr. Shriram Vinod eshmukh i/b Mr. Nirmal Dayama, for Respondent Nos.1 and 2 in both petitions.
- Mr. R. K. Ingole, AGP for Respondent – State.

**CORAM : MANISH PITALE AND
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 11th AUGUST 2025

PRONOUNCED ON : 18th AUGUST 2025

JUDGMENT: (PER MANISH PITALE, J.)

1. In these petitions, one of the petitioners is the successful bidder and the other is the unsuccessful and disgruntled bidder, who claims that the respondent No.1 – Jalgaon Municipal Corporation, deliberately changed the rules of the game after it had been initiated, only with a view to favour the successful bidder. Both the petitioners have relied upon judgments of the Supreme Court and this Court to support their respective positions, which necessarily pertain to the extent of jurisdiction that can be exercised by this Court, under Article 226 of the Constitution of India, in the context of tender and commercial matters.

2. The chronology of events needs to be appreciated in brief

to consider the rival contentions.

3. On 13th December 2024, the respondent No.1 – Corporation issued tender notice for the work of collection and transportation of Municipal waste through *Ghanta Gadi* with segregation of wet and dry waste by collecting from house to house. This involved supply of 500 workers also. The tender notice, *inter alia*, specified formula for deciding the lowest bidder (L-1) amongst bidders.

4. On 24th December 2024, a pre-bid meeting was held by the respondent No.1 – Corporation with the bidders, which included petitioner in Writ Petition No.3079 of 2025 – Watergrace Products, petitioner in Writ Petition No.2183 of 2025 – BVG India Limited and a third bidder – Global Waste Management Cell Private Limited. In the pre-bid meeting, amongst other things, the respondent No.1 – Corporation specified that the aforesaid formula for deciding L-1 was to be construed in the context of supplying 500 workers for the said work.

5. On 29th January 2025, the technical evaluation report was published by the respondent No.1 – Corporation in which all the aforesaid three bidders were declared as qualified and thereupon, the

bids were opened on the same day with the details quoted by the bidders being published, wherein petitioner – BVG India Limited was shown as L-1.

6. According to the petitioner – BVG India Limited, despite the aforesaid state of affairs, respondent No.1 – Corporation was not taking further logical steps in the matter, due to which it had to reach out to the respondent – Corporation for issuing letter of acceptance of the bid and for granting work order. It is the case of the petitioner – BVG India Limited that respondent – Corporation informed it that the status of BVG India Limited as L-1 was being reconsidered and in that backdrop, the letter of acceptance was not being issued. On 31st January 2025, petitioner – BVG India Limited sent a representation to the respondent – Corporation giving its version of calculations, trying to impress upon the respondent – Corporation that BVG India Limited was indeed the lowest bidder and that accepting the said lowest bid for a period of five years of the proposed contract would result in lesser cost being incurred by the Corporation.

7. According to the petitioner – BVG India Limited, since the respondent – Corporation was not responding, it was constrained to file aforesaid Writ Petition No.2183 of 2025, praying for a direction to

the said respondent – Corporation to award the work to BVG India Limited by issuing letter of acceptance in the light of the fact that the bid offered by BVG India Limited was the lowest bid. On 13th February 2025, this Court issued notice in the aforesaid Writ Petition No.2183 of 2025. The documents indicate that on 13th February 2025 itself the e-tender committee of the respondent – Corporation held a meeting and decided that the most beneficial bidder for the Corporation be declared as the successful bidder and that petitioner – BVG India Limited be called for rate negotiations. On 14th February 2025, petitioner – Watergrace Products sent a letter to respondent – Corporation making allegations against petitioner – BVG India Limited about false and incorrect disclosures in the technical bid. On 25th February 2025, respondent – Corporation issued a letter to petitioner – BVG India Limited to remain present before the Municipal Commissioner, as its bid was found to be the lowest bid, so that further negotiations could be undertaken.

8. On 26th February 2025, petitioner – Watergrace Products issued a legal notice to the respondent – Corporation to recall the aforesaid letter dated 25th February 2025.

9. On 04th March 2025, negotiations between petitioner –

BVG India Limited and the respondent – Corporation resulted in reduced bid rates with regard to service charge as well as tipping fees and in this backdrop, on 10th March 2025, petitioner – BVG India Limited communicated the revised aggregate rates for a period of five years concerning the said contract. On 20th March 2025, the standing committee of the respondent – Corporation sanctioned the revised negotiated rates proposed by petitioner – BVG India Limited.

10. In the meanwhile, on 27th February 2025, the petitioner – Watergrace Products filed Writ Petition No.3079 of 2025, challenging the said letter / communication dated 25th February 2025, issued by the respondent – Corporation to petitioner – BVG India Limited. On 04th March 2025, this Court issued notice in the said writ petition and it was directed that work order that may be issued shall be subject to final outcome of said writ petition. Thereafter, pleadings were completed in both the writ petitions and during May, June and July 2025, the respondent – Corporation called upon petitioner – BVG India Limited to deposit security amount, stamp duty charges and eventually on 21st July 2025, executed an agreement. On 24th July 2025, respondent –Corporation issued work order in favour of petitioner – BVG India Limited, subject to outcome of both the writ petitions. It is

in this backdrop, that these writ petitions were taken up for hearing and disposal at the admission stage itself.

11. Dr. Abhinav Chandrachud, learned counsel appearing for the petitioner – Watergrace Products in Writ Petition No.3079 of 2025, submitted that two specific issues are raised on behalf of the said petitioner to challenge the actions of the respondent – Corporation. Firstly, the formula for deciding L-1 as per tender notice was absolutely clear and on proper application of the said formula, it was evident that petitioner – Watergrace Products was the L-1 bidder. Specific attention of this Court was invited to pleadings in the writ petition, at paragraph Nos.5(h)(i), (ii) and (iii), to demonstrate application of the said formula to the offers made by the three bidders and as to the manner in which petitioner – Watergrace Products was the L-1 bidder. It was submitted that the respondent – Corporation arbitrarily and with a view to benefit petitioner – BVG India Limited changed the formula itself, due to which BVG India Limited became L-1 bidder and therefore, it has illegally benefited. It was submitted that this amounts to changing rules of game after it had begun and hence, on this ground itself, the writ petition filed by Watergrace Products deserves to be allowed and the one filed by BVG India Limited deserves to be

dismissed.

12. Secondly, it was submitted that petitioner BVG India Limited had made false and misleading statements in its bid. In this regard, attention of this Court was invited to annexure 3 to the tender notice, which required the bidders to give specific information. Clause 6 thereof, required a statement to be made by the bidder that it was not placed in the list of blacklisted entities by a Municipal Corporation or any Government institution. It was further submitted that although petitioner – BVG India Limited made such a statement in its bid, the record would show it had been blacklisted by a public body at Raipur for a specific period. On this basis, it was submitted that petitioner BVG India Limited ought to have been disqualified from participating in the tender process and yet, the respondent – Corporation not only entertained its bid but also awarded the contract in an illegal manner.

13. It was submitted that the respondent – Corporation cannot be permitted to rely upon a clause in the tender notice reserving rights in the Corporation to negotiate with the bidders to extract the most beneficial bid, for the reason that the such negotiations would have to be based on a proper application of the formula for deciding L-1 specified in the tender notice. It was further submitted that although

the tender document consisted of a clause for dispute resolution referring to the provisions of the Arbitration and Conciliation Act, 1996, since petitioner – Watergrace Products is raising a challenge based on arbitrariness and discrimination, invoking its rights under Article 14 of the Constitution of India, notwithstanding the said clause, the said petition filed by petitioner - Watergrace Products deserves to be entertained and allowed.

14. It was further submitted that the respondents cannot claim that the petition filed by Watergrace Products should not be entertained because the consequential actions of accepting the bid of petitioner – BVG India Limited and issuance of work order have not been challenged by making amendments, for the reason that order dated 04th March 2025, passed by this Court itself directed that the work order, if issued, would be subject to the final outcome of the writ petition filed by Watergrace Products. It was submitted that in the light of the arbitrary and illegal actions of the respondent – Corporation, Writ Petition No.3079 of 2025, filed by Watergrace Products deserves to be allowed and the petition filed BVG India Limited deserves to be dismissed, with further direction to conduct a fresh tender process for allotment of the said contract / work. In

support of the submission, that rules of the game could not have been changed after it had begun, reliance was placed on judgment of the Supreme Court in the case of **Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others.**¹ In support of the proposition that gold posts cannot be rearranged during the bidding process to affect right of some or to deny a privilege to some, reliance was placed on judgment of the Supreme Court in the case of **Central Coalfields Limited and Another Vs. SLL-SML (Joint Venture Consortium) and others**².

15. Mr. Karan Bhosale, learned counsel appearing for petitioner – BVG India Limited in Writ Petition No.2183 of 2025, submitted that the contentions raised on behalf of petitioner – Watergrace Products are misplaced and that the contract / work in the present case has been correctly awarded to petitioner – BVG India Limited. It was submitted that petitioner – Watergrace Products cannot succeed in its writ petition, for the reason that it has failed to amend the writ petition to challenge the work order issued in favour of petitioner – BVG India Limited. Hence, no effective relief can be granted to petitioner – Watergrace Products.

1 (2000) 5 SCC 287

2 (2016) 8 SCC 622

16. On the aspect of application of the formula contained in the tender notice for deciding L-1, it was submitted that the pre-bid meeting and the consequential interpretation placed on the said formula was being deliberately ignored by petitioner – Watergrace Products. In this context, reference was made to the pre-bid meeting held on 24th December 2024, wherein the representatives of all the prospective bidders were present and it was specifically decided that the said formula for deciding L-1 would be on the basis of 500 workers to be provided and this manner of applying the formula was agreed upon by all the prospective bidders, including petitioner – Watergrace Products. Having participated in the bidding process, being fully aware of the said pre-bid meeting and its consequences, petitioner – Watergrace Products cannot be permitted to challenge the application of the formula in the facts of the present case. It was further submitted that the clause in the tender notice just below the clause pertaining to the formula for deciding L-1 specifically laid down that the respondent – Corporation would be at liberty to negotiate and to accept the bid that would be eventually most beneficial to the Corporation. It was submitted that since the bid of petitioner – BVG India Limited was indeed the lowest, it was not only beneficial for the Corporation, but in the public interest that the bid of petitioner – BVG

India Limited was accepted.

17. The learned counsel appearing for petitioner – BVG India Limited also referred to the Central Vigilance Commission (CVC) Guidelines to contend that pre-bid meeting / conference was an accepted norm and the agreed approach was to be adopted while accepting bids in such circumstances.

18. In respect of the allegations regarding suppression of information pertaining to blacklisting of petitioner – BVG India Limited, it was submitted that when the said petitioner offered its bid, it was certainly not blacklisted. Even the alleged blacklisting of the said petitioner, which was for limited period, was stayed and in that context reference was made to the relevant order passed by the Competent Court. It was further submitted that in any case, the information sought in the tender notice, if interpreted in the manner in which petitioner – Watergrace Products was insisting, would result a situation where an entity blacklisted for a limited period of time would be debarred from participating in any tender process initiated by the respondent – Municipal Corporation. The said interpretation would do violence to the tender process itself.

19. The learned counsel for petitioner – BVG India Limited

referred to and relied upon judgments of the Supreme Court in the cases of **Air India Limited vs. Cochin International Airport Limited**³, **Jagdish Mandal Vs. State of Orrisa and others**⁴, **Tata Motors Limited Vs. Brihanmumbai Electric Supply and Transport undertaking (BEST) and others**⁵, and **N. G. Products Vs. Vinod Kumar Jain & others**⁶, judgment of Division Bench of this Court in the case of **Reutech Mining Vs. Union of India**⁷ and judgment of the Division Bench of Delhi High Court in the case of **Sumitomo Chemical India Private Limited Vs. Union of India and Others**⁸.

20. It was submitted that if the position of law laid down in the said judgments is appreciated and followed, the petition filed by Watergrace Products deserves to be dismissed. It is further submitted that since the respondent – Corporation had, in fact, accepted the lowest bid of petitioner – BVG India Limited, appropriate orders can be passed in the writ petition filed by the said petitioner.

21. Mr. Rajendraraa Deshmukkh, learned senior counsel appearing for respondent – Corporation in both petitions submitted that since the lowest bid of petitioner – BVG India Limited had been

3 (2000) 2 SCC 617

4 (2007) 14 SCC 517

5 (2023) 19 SCC 1

6 (2022) 6 SCC 127

7 2023 SCC OnLine Bom 36

8 2010 SCC OnLine Del 2479

accepted and work order was also issued, the writ petition filed by the said petitioner can be disposed of. As regards the petition filed by petitioner – Watergrace Products, it was submitted that the same was based on a misinterpretation of the position of law concerning the scope for this Court in writ jurisdiction to interfere with the decisions taken by the respondent – Corporation. It was submitted that in the first place the tender notice itself provided for dispute resolution through arbitration, which the petitioner – Watergrace Products had failed to invoke. Approaching this Court in writ jurisdiction directly ought not to be permitted in the face of such dispute resolution clause.

22. Apart from this, attention of this Court was invited to the discussions that took place in the pre-bid meeting, in the present case of the representatives of petitioner – Watergrace Products, as also all the other prospective bidders. It was submitted that all the prospective bidders, including petitioner – Watergrace Products had agreed to the manner in which the formula for deciding L-1 was to be applied in terms of the tender notice. Much emphasis was placed to the clause just below the clause providing for the formula, which reserved the right for the respondent – Corporation to accept the bid that was eventually found to be most beneficial. It was submitted that the

clauses of the tender notice being applied in the backdrop of the decisions taken in the pre-bid meeting, clearly indicate that no case was made out by the petitioner – Watergrace Products for interference in the present matter. The learned senior counsel for the respondent – Corporation specifically relied upon the meeting of the E-tender Committee of the respondent – Corporation, wherein the bids of the three bidders i.e. two petitioners herein and Global Management Cell Private Limited were considered. It was emphasized that the bid of petitioner – BVG India Limited would result in cost of Rs.7.23 Crores for the respondent – Corporation, while the bid of petitioner – Watergrace Products would lead to cost of Rs.43.41 Crores and the bid of the Global Management Cell Private Limited would lead to cost of Rs.146.38 Crores for the respondent – Corporation. On this basis, it was submitted that petitioner – BVG India Limited was obviously L-1 and the most beneficial for the respondent – Corporation in the context of the said public work of waste disposal. It was submitted that the work order had been already issued and since the petitioner – Watergrace Products had failed to demonstrate any violation of mandatory requirements, the petition filed by the said petitioner deserved to be dismissed.

23. This Court has considered the rival submissions in the light of the position of law pertaining to the limited scope available in writ jurisdiction for this Court to interfere with the ultimate decision taken by the respondent – Corporation in the context of the aforesaid tender notice and awarding of contract / work concerning waste disposal in the City of Jalgaon. We accept the contention raised on behalf of petitioner – Watergrace Products that since the challenge in this case is based on alleged arbitrariness on the part of the respondent – Corporation, violating Article 14 of the Constitution of India, notwithstanding the dispute resolution clause in the tender notice, this Court can consider the challenge within the scope available under Article 226 of the Constitution. It is settled law that the Writ Court while exercising power of judicial review would consider the process undertaken by the Public Authority like the respondent – Municipal Corporation, but judicial review of the merits of the decision would not be undertaken. Before proceeding to deal with the specific contentions raised in the facts of the present case on behalf of the rival parties, it would be appropriate to refer to the position of law in this regard.

24. In the case of **Jagdish Mandal Vs. State of Orrisa and others (supra)**, the Supreme Court clarified the position of law in the

following terms :

“22. *Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/ procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :*

- (i) *Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.*

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.”

ii) *Whether public interest is affected.*

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

25. In the case of **Air India Limited vs. Cochin International Airport Limited (supra)**, the Supreme Court referred to the settled position of law recognized in the earlier judgment in the case of **Ramana Dayaram Shetty Vs. The International Airport Authority of India & Others⁹**, to hold that a public body or State essentially enters into a commercial transaction, while awarding such contracts and that such a public body or State can choose its own method to arrive at a particular decision. It can enter into negotiations before finally accepting one of the offers and it can even be free to grant any relaxation for *bona fide* reasons if permitted by the tender conditions and that an offer may not be accepted even if it happens to be the highest or the lowest. The said position of law leaves enough play in

9 1973 (3) SCC 489

the joints for a public body or State, while taking decisions in the context of awarding contracts for public works. There can be hardly any doubt that public good and benefit to the public at large has to be one of the main considerations for such a public body or State while taking such decisions.

26. In the case of **N. G. Products Vs. Vinod Kumar Jain (supra)**, the Supreme Court placed emphasis on the position of law that the Writ Court should refrain itself from imposing its decision over the decision of such public body or State on the question as to whether a particular bid is to be accepted or not. It was recognized that Courts lack the expertise to interfere in decisions which may involve technical issues and that the public body or State would be better placed to take such decisions.

27. In the case of **Tata Motors Limited Vs. Brihanmumbai Electric Supply and Transport undertaking (BEST) and others (supra)**, the limits of interference by the Writ Court were reiterated in the following terms :

“55. Ordinarily, a 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 unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at

naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India and Others, reported in (2005) 1 SCC 679.”

28. The said position of law was followed by the Division Benches of this Court and the Delhi High Court in the cases of **Reutech Mining Vs. Union of India (supra)** and **Sumitomo Chemical India Private Limited Vs. Union of India and Others (supra)**. In fact, in the said Division Bench judgment of the Delhi High Court a detailed overview of various judgments of the Supreme Court was undertaken and the above-mentioned position of law was reiterated.

29. The said position of law makes it very clear that ordinarily the Writ Court would not interfere with the decision of a public body like the respondent – Municipal Corporation on the aspect of a bid being accepted or not, unless the facts make out a gross case against such a public body. It is to be recognized that scrapping of a process and initiating a fresh tender process consumes considerable period of

time and necessarily results in loss to the public exchequer. This is also a significant aspect to be kept in mind.

30. In the light of the said position of law, we have considered the documents and material placed on record and the rival submissions placed before us. The attack on behalf of petitioner – Watergrace Products is two fold. Firstly, the alleged tinkering with and misapplication of the formula for deciding L-1 and secondly, alleged suppression of blacklisting of petitioner – BVG India Limited, although such information was required to be divulged as per the tender notice.

31. As regards the first aspect, we find that the formula as per the tender notice for deciding L-1 was as follows :

$$\frac{\text{"L1 = Service Charge per labour per day"} + \text{Tipping Fee}}{304 \text{ ton per day}}$$

32. Petitioner – Watergrace Products has placed much emphasis on the calculation of L-1 as per the above said formula, which has been depicted in paragraph No.5 (h) (ii) and (iii). There is no serious dispute about the arithmetical calculations depicted by petitioner – Watergrace Products in the aforesaid paragraph of its writ petition. But, we find that the respondent – Corporation through its E-Tender Committee held a pre-bid meeting on 24th December 2024,

which was attended by four bidders, including the two petitioners herein. In the said meeting, it was specifically emphasized that the above-mentioned formula for deciding L-1 would be applied in the context of 500 workers to be provided by the bidders. It is on the basis of aforesaid decision arrived at, in the pre-bid meeting that respondent – Corporation decided as to which of the bidders would be L-1. Again there is no serious dispute about the arithmetical calculations done by the respondent – Corporation by specifically introducing the aspect of 500 workers in the formula. The question is, as to whether this can be said to be tinkering with the formula as specified in the tender notice for deciding L-1 and whether it can be said that the rules of the game were changed after the game had begun.

33. We find that while undertaking the said process of awarding contracts for public works, the concept of pre-bid meeting / conference is by now well recognized. In fact, tender notices provide for such pre-bid meetings, so that all the bidders are fully aware about the manner in which the public body or State would be proceeding in the matter. The CVC Guidelines also provide for such pre-bid conferences. It was sought to be argued on behalf of petitioner – Watergrace Products that since the tender notice as modified by the

decisions in the pre-bid meeting was not put up on the portal of the respondent – Corporation, the entire proceeding is vitiated. But, we are not inclined to accept the said stand sought to be taken on behalf of petitioner – Watergrace Products, for the reason that there was no denial about the fact that representative of the said petitioner was indeed present in the pre-bid meeting and that all concerned parties were aware about the manner in which the respondent – Corporation would be applying the formula for arriving at L-1. For the same reason, we are unable to accept the contention raised on behalf of Watergrace Products that it suffered prejudice as the amended terms and conditions recorded in the minutes of the pre-bid meeting did not specifically refer to the clause pertaining to the formula for deciding L-1. In fact, the details recorded just above the amended terms and conditions specifically referred to the manner in which the formula would be applied.

34. We also find that there is substance in the contention raised on behalf of the respondent – Corporation that the clause just below the aforesaid clause providing for formula to decide L-1 specifically left enough room for the respondent – Corporation to negotiate and to take a decision in the matter, which was most beneficial for the

respondent – Corporation. When we talk of a decision being beneficial to the respondent – Corporation, it being a public body, such benefit obviously pertains to benefit to the public at large, for the reason that, lesser the cost for engaging private entities for public works, lesser is the burden on the public exchequer. To that extent, the respondent – Corporation is justified in contending that there has to be enough play in the joints for it to take a proper decision, so as to reduce the cost and provide maximum benefit to the public. Such cost-benefit analysis within the terms of the tender notice can certainly be permitted to the respondent – Corporation.

35. We find that the contents of the minutes of the pre-bid meeting sufficiently indicate that all the prospective bidders, including the petitioner – Watergrace Products were fully aware about the manner in which the aforesaid formula for deciding L-1 was to be applied and therefore, this cannot be said to be a case where the rules of the game were changed after the game was set into motion. In the facts of the present case, we find that the position of law laid down by the Supreme Court in the cases of **Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others (supra)**, and **Central Coalfields Limited and Another Vs. SLL-SML (Joint**

Venture Consortium) and others (supra) cannot inure to the benefit of petitioner – Watergrace Products. This can neither be said to be a case where the rules of game were changed after the game had begun or that the goal posts were rearranged to affect the right of petitioner – Watergrace Products or to grant any privilege to the other bidders, including petitioner – BVG India Limited.

36. A perusal of the details of the E-Tender Committee meeting dated 13th February 2025, as regards details of the costs to be incurred by the respondent – Municipal Corporation for both parts of the tender i.e. providing 500 labours and the machinery for waste disposal, show that accepting the bid of petitioner – BVG India Limited resulted in lower costs being incurred by the respondent – Corporation than the costs to be incurred if the bid of petitioner – Watergrace Products was to be accepted. The figures have not been seriously disputed by any of the parties and perusal of the same shows that acceptance of the bid of petitioner – BVG India Limited would result in cost of Rs.7.23 Crores being incurred by the respondent – Corporation, while accepting the bid of petitioner – Watergrace Products would result in cost of Rs.43.41 Crores being incurred. The difference between the two is not marginal but substantial, thereby indicating that the respondent –

Corporation did take a rational decision as per the terms of the tender notice, which can be said to be most beneficial for the respondent – Corporation and consequentially beneficial for the public exchequer. This cannot be said to be a gross or a palpably, arbitrary and wrong decision taken by the respondent – Municipal Corporation and hence, this Court while exercising writ jurisdiction cannot interfere with the ultimate the decision taken by the respondent – Corporation.

37. We find that the contention raised on behalf of the petitioner – Watergrace Products that the entire process ought to be scrapped and fresh tender process should be initiated, cannot be accepted as it will lead to unnecessary loss to the public exchequer, apart from the fact that petitioner – Watergrace Products has not been able to make out a case for this Court to exercise Writ jurisdiction in the narrow window available in such matters concerning tender process and commercial contracts to be entered into by public bodies like the respondent – Municipal Corporation.

38. As regards the second ground raised on behalf of petitioner – Watergrace Products about deliberate suppression of facts by the petitioner – BVG India Limited in the context of blacklisting, we find that the requirement in annexure 3 of the tender notice at clause 6

does require a statement that the bidder has not been placed on any blacklist by a Public Body, Municipal Corporation or Government Institution. But, the purport of such a clause can also be interpreted to mean that at the time when the bid is being submitted, the bidder is not placed in any blacklist. It is a possible interpretation and there is sufficient material placed on record by petitioner – BVG India Limited to show that the order of blacklisting being relied upon by petitioner – Watergrace Products was for a limited period and that in any case it had been stayed by the Competent Court. In such circumstances, it cannot be said that there was a misleading statement made on behalf of petitioner – BVG India Limited while submitting the bid in the present case. Therefore, we do not find any substance in the said contention raised on behalf of petitioner – Watergrace Products.

39. On an overall analysis of the facts and circumstances of the present case, we find that petitioner – Watergrace Products has failed to make out its case to declare that the impugned letter / communication dated 25th February 2025, issued by the respondent – Municipal Corporation is arbitrary, illegal and mala fide or that it deserves to be quashed and set aside. Therefore, there is no ground made out by petitioner – Watergrace Products to interfere with

consequential actions taken by the respondent – Corporation, including the work order issued in favour of petitioner – BVG India Limited. Hence, the Writ Petition No.3079 of 2025 is dismissed.

40. As regards Writ Petition No.2183 of 2025, we find that since the respondent – Municipal Corporation proceeded further by treating petitioner – BVG India Limited as the lowest bidder and in fact, issued the work order in its favour, nothing further survives in the said petition and hence, it is disposed of as such.

41. In the light of the above, the interim direction that work order issued in the present case would be subject to the final outcome of the writ petitions would come to an end. Consequently, BVG India Limited shall continue to perform its part of the contract as per work order issued in its favour by the respondent – Municipal Corporation without any further hindrance.

42. The writ petitions are disposed of in above terms. Pending applications, if any, also stand disposed of.

(Y. G. KHOBRAGADE, J.)

(MANISH PITALE, J.)