



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

WRIT PETITION (L) NO.2694 OF 2025

**BASAVRAJ
GURAPPA
PATIL**

Konkan Railway Corporation Ltd.

..... Petitioner

Vs.

Union of India

..... Respondent

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BASAVRAJ GURAPPA
PATIL

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Mr.Gautam Ankad, Senior Advocate a/w. Mr. Chirag Sancheti, Mr. Asif Lampwala, Mr. Joshua D'Souza and Mr. Mutahhar Khan i/b. Bulwark Solicitors for the petitioner

Mr. Rajshekhar V. Govilkar, Senior Advocate a/w. Mr. N. R. Bubna and Ms. Shaba N. Khan for respondent

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

**RESERVED ON : MARCH 4, 2025
PRONOUNCED ON : MARCH 13, 2025**

JUDGMENT (PER : CHIEF JUSTICE)

1. Rule. Rule is made returnable forthwith. By consent of the parties, the matter is heard finally.

2. This writ petition takes an exception to order dated 27th January 2025 by which technical bid submitted by the petitioner has been found to be non-responsive and rejected. In order to appreciate the grievance of the petitioner, relevant facts need mention, which are stated infra.

(i) FACTS:-

3. The petitioner is a Company registered under the Companies Act, 1956 and is a Public Sector Undertaking. The majority

shareholder of the petitioner is the Government of India and its functions under the administrative control of Ministry of Railways. The petitioner has executed several railway projects at various locations across the country. The net-worth of the petitioner is approximately Rs.5865 crores.

4. The Chief Administrative Officer of the Central Railways published a Request for Proposal (**RFP**) for construction of Earth Work, Major/Main Bridges, RuBs, Pway Work and Miscellaneous Civil Works in connection with Gauge Conversion from Pachora-Jamner, for a total project value of INR 696,23,59,867.32 in Two Packet System, viz. Packet-1 Technical Bid and Packet-II: Price Bid.

5. As per the Schedule indicated in RFP, pre-bid meetings for the tender were scheduled to be held on 26th June 2024 and 8th July 2024. The tender document was to be issued on 5th June 2024 and the time-line for submission of the bid was 11.00 hrs on 5th May 2024. The technical bids were to be opened on 14th September 2024. The petitioner, along with other bidders submitted their bid and deposited earnest amount of Rs.2 Crores. The petitioner submitted its bid on 4th September 2024. However, the respondent did not adhere to the time schedule mentioned in the RFP and after a period of five months, on 22nd January 2025 rejected the bid of the petitioner on the ground that the petitioner was "technically not eligible".

6. The petitioner challenged the aforesaid decision dated 22nd January 2025 in writ petition (L) No.2475 of 2025 with a direction

to the respondents to reconsider the technical bid of the petitioner by affording it an opportunity of hearing and to pass a speaking order. In compliance of the aforesaid order, the respondent, by order dated 27th January 2025 has rejected the technical bid of the petitioner, *inter alia*; on the ground that the petitioner has not received 75% of the amount in qualifying contract. In the aforesaid factual back-ground, this petition has been filed.

(ii) **SUBMISSIONS:-**

7. Learned senior counsel for the petitioner, while inviting attention of this Court to Clause 2.2.2.1(i) of the RFP, submitted that interpretation put-forth by the respondent to the aforesaid clause is arbitrary and irrational. It is further submitted that the petitioner has received Rs.522.17 crores which is 75% of the present contract value i.e. Rs.696.00 crores. It is also submitted while rejecting the technical bid of the petitioner, respondent has considered the entire value of the Northern Railway Project i.e. Rs.17,500 crores in stead of the present contract value i.e. Rs.696 crores. The aforesaid interpretation is *ex-facie* contrary to the terms of the contract. It is urged that the expression "present contract value" used in Clause 2.2.2 (ii) means the value of present contract as is evident from the scope of tender.

8. It is contended that the impugned order suffers from perversity as it disqualifies the contractor like the petitioner which has vast experience in execution of large railway projects and qualifies contractors with little or no experience in large scale projects. The interpretation put-forth by the respondent at the

tender conditions offends the common sense and is commercially absurd. It is pointed out that the petitioner's technical bid has been accepted by the respondent in the tenders with similar clause and the East Coast Railways and Southwestern Railways have also accepted the bid of the petitioner on the basis of the same documents which were submitted by the petitioner in the present tender. It is contended that the respondent is aware that the petitioner's financial bid would be lowest and therefore, interpretation has been put-forth on the tender conditions so as to exclude the petitioner with a view to favour a specific bidder. Lastly, it is contended that even though the author of the tender is best judge how the tender ought to be interpreted, yet the Court can interfere where the interpretation of the tender is arbitrary or irrational. In support of the aforesaid submission reliance has been placed on decision in ***Galaxy Transport Agencies, Contractors, Traders, Transports & Suppliers v. New J.K. Roadways, Fleet Owners & Transport Contractors***¹ and a Division Bench judgment of this Court in ***Mahalsa Services Through its Proprietor, Mr. Pradeep P. Shet Vs. Directorate of Health Services, Government of Goa & Ors.***²

9. On the other hand, learned senior counsel for the respondent submitted that the petitioner is a corporate entity and therefore, is not entitled to invoke Article 19 of the Constitution of India. In support of the aforesaid submission reliance has been placed on the decision of the Supreme Court in ***State Trading Corporation***

1 (2021) 16 SCC 808

2 2024 SCC OnLine Bom 250

of India Ltd. Vs. The Commercial Tax Officer and Ors.³ It is further submitted that the expression “present value of the contract” contained in Clause 2.2.2.1(ii) of the tender document means the qualifying contract. It is contended that since the petitioner was awarded qualifying contract for sum of Rs.17,500 crores and since it has not received 75% of the said contract value, therefore in view of the stipulation contained in Clause 2.2.2.1(ii) of the tender document, the petitioner’s technical bid has rightly been rejected. It is urged that the petitioner has taken part in the tender and therefore, it is not open for it to challenge the rejection of its technical bid. It is contended that the respondent is the author of tender and is the best judge as to how the tender ought to be interpreted. It is further contended that the interpretation put-forth by the petitioner is neither arbitrary nor irrational. It is also pointed out that in four earlier tenders, containing similar stipulation, the bid of the petitioner was not accepted, however, the petitioner did not question the rejection of the bid in four such contracts and therefore, the petitioner is estopped from questioning the same in this petition. It is submitted that the scope of judicial review in tender matters is extremely limited. In support of the aforesaid submission reliance has been placed on a Division Bench decisions of this Court in **Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Generation Co. Ltd. & Anr.**⁴ **Geocon Consultancy, through its Proprietor, Akshay Vs. State of Maharashtra, through its Principal Secretary, Urban Development Department &**

³ AIR 1963 SC 1811

⁴ 2022 SCC OnLine Bom 11756

Anr.⁵, Rosmerta Technologies Ltd. Vs. State of Goa⁶ and Vascular Concepts Ltd. Vs. State of Maharashtra, through Director of Health Services and Ors.⁷

10. Learned senior counsel for the petitioner, by way of rejoinder, submitted that the challenge in the instant writ petition is based on the ground that the action of respondent offends Article 14 of the Constitution of India, therefore, the decision of the Supreme Court in ***State Trading Corporation of India Ltd. (supra)*** is of no assistance to the respondent in the facts of the case. It is also urged that the earlier contracts were of smaller value and therefore, the petitioner has not chosen to challenge the same.

11. We have considered the rival submissions made on behalf of both the parties and perused the record.

(iii) **Relevant Clauses of RFP:-**

12. At this stage, it is apposite to take note of the relevant clauses of the contract viz. clause 3.1.6 and clause 2.2.2.1(i) of the RFP.

"3.1.6 *Test of responsiveness*

2.2.2.1(i) ***Technical Capacity*** – *For demonstrating Technical Capacity and experience (the "Technical Capacity"), the Bidder shall, during the last 5(five) previous Financial Years and the current financial year upto the Base month (not to be read with para 2.1.13).*

5 **2024 SCC OnLine Bom 2693**

6 **2014 SCC OnLine Bom 891**

7 **2014 SCC OnLine Bom 485**

(i) have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof, as further adjusted in accordance with clause 2.2.2.4(i) & (ii), is more than 2.5 (two and half) times the Estimated Project Cost (the "**Threshold Technical Capacity**") i.e. (**Rs.17,40,58,99,668/-**).

Provided that at least one fourth of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 2.2.2.4(i) & (ii).

(iv) **IMPUGNED ORDER:-**

13. The aforesaid clauses, along with remarks as mentioned in the impugned order dated 25th January 2025 are extracted below for the facility of reference:

RFP Clauses	Description	Remarks
Clause 3.1.6 of RFP	Test of Responsiveness to determine whether each Technical Bid is responsive to the requirements of the RFP with regard to the submission of documents as per Para 3.1.6	Petitioner fulfilled this condition
2.2.2.1(i)	have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof, as further adjusted in accordance with clause 2.2.2.1(i) of RFP , is more than 2.5 (two and half) times the Estimated Project	Petitioner fulfilled this condition

	Cost (the "Threshold Technical Capacity") (i.e. Rs.17,40,58,99,668/-).	
2.2.2.1(i)	Provided that at least one fourth of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/or Category 3 (i.e. Railway Sector) specified in Clause 2.2.2.1(i) of RFP.	Petitioner fulfilled this condition
2.2.2.1(ii)	Undertaken at least one Eligible Project of Railway Sector as mentioned in clause 2.2.2.4(iii) of RFP , value of not less than [35% (thirty-five) per cent] of the Estimated Project Cost (i.e. Rs.243,68,25,953/-)	Petitioner fulfilled this condition
2.2.2.1(ii) =	have received payments for not less than 75 (seventy-five) percent value of present contract value (excluding the payment made for adjustment of Price variation (PVC0, if any) of such project as per clause 2.2.2.1(ii) of RFP.	Petitioner does not fulfill this condition
2.2.2.2.	Financial Capacity: The petitioner shall have a minimum Net Worth (the "Financial Capacity") of Rs.34,81,17,993 (Rupees Thirty-Four Crores Eighty-One Lakh Seventeen Thousand and Nine Hundred Ninety-Three only) at the close of the preceding Financial Year.	Petitioner fulfilled this condition

Thus, it is evident that the technical bid of the petitioner has not found to be responsive on the ground that the petitioner has

not received 75% value of the present contract value i.e. the qualifying contract i.e. contract awarded to the petitioner by Northern Railway worth Rs.17500 crores.

(v) **LEGAL PRINCIPLES:-**

14. The scope of judicial review in contractual matters as well as the scope of interference with regard to interpretation put forth by the authority inviting the tenders is well settled in catena of decisions of the Supreme Court. In the celebrated case of ***Tata Cellular Vs Union of India***⁸, it has been held that Constitutional Courts should not interfere in the matters of tenders unless substantial public interest is involved or transaction is malafide. It has been further held that while exercising judicial review in respect of contracts the Court should concern itself primarily with the question whether there has been any infirmity in the decision making process. In ***Afcons Infrastructure Ltd. Vs Nagpur Metro Rail Corporation Ltd.***⁹ it was held that the employer of a project having authored the tender documents is the best person to understand and appreciate its requirements and interpret its documents. It was further held that the Constitutional Courts must defer to this understanding and appreciation of the tender documents unless there is malafide or perversity in understanding or appreciation of the terms of the tender conditions. It was also held that the authority inviting tender may give an interpretation to the tender document which may not be acceptable to the

⁸ (1994) 6 SCC 651

⁹ (2016) 16 SCC 818

Constitutional Courts but that by itself is not a reason for interference with the interpretation put forth by the authority inviting tenders. Similar view was taken in **Montecarlo Ltd. Vs NTPC¹⁰** and it was held that the tender inviting authority is the best judge to interpret the tender documents. However, the exercise of powers of judicial review is called for if the approach of the authorities is arbitrary or is mala fide.

15. In **Silppi Construction Contractors Vs Union of India¹¹**, it was held that there is a need to exercise restraint and caution and judicial intervention in matters of contracts involving state instrumentalities is justified only in case of overwhelming public interest. It was further held that the Court should give way to the opinion of the tender inviting authority unless decision is totally arbitrary or is unreasonable. It was also held that the Court does not sit like a Court of appeal over the decision of appropriate authority and the authority floating the tender is the best judge of its requirements and the court's interference should be minimal. The principles laid down in the decisions of the Supreme Court in **Afcons Infrastructure Ltd.** (supra), **Montecarlo Ltd.** (supra) and **Silppi Construction Contractors** (supra) were reiterated with approval by three Judge Bench of the Supreme Court in **Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs New J. K. Roadways, Fleet Owners and Transport Contractors and others** (supra). In **Agmatel India Pvt. Ltd. Vs. Resources Telecom and**

¹⁰ (2016) 15 SCC 272

¹¹ (2020) 16 SCC 489

others¹², the aforesaid principles were again reiterated in Para 34 and it was held as under:-

"34. In such matter of contracts, the process of interpretation of terms and conditions is essentially left to the author of the tender document and the occasion for interference by the Court would arise only if the questioned decision fails on the salutary tests laid down and settled by this Court in consistent decisions, namely, irrationality or unreasonableness or bias or procedural impropriety.

In **Banshidhar Construction Pvt. Ltd. Vs Bharat Coking Coal Ltd. and others**¹³, it was held that decision of the Government/its instrumentalities must be free from arbitrariness and must not be affected by any bias or activated by malafides. The State Government being public authority is expected to uphold fairness, equality and in public interest, even while dealing with contractual matters.

(vi) **REASONS:-**

16. In the backdrop of the aforesaid well settled legal principles, we may advert to the facts of the case in hand. The solitary issue which arises for consideration in this writ petition is whether the interpretation put forth by the respondent on the expression 'present value of contract' contained in clause 2.2.2.1 of the tender document means the qualifying contract. The object of

¹² (2022) 2 SCC 362

¹³ (2024) 10 SCC 273

issuing the tender is to ensure maximum participation of the tenderers and interpretation of the terms and conditions of the tender document which is fair, just and reasonable has to be accepted. We have carefully perused the clause 2.2.2.1 of the contract. On plain and literal meaning of the expression 'present contract value' means the present value of the contract i.e. Rs.696,23,59,867.32 crore. The interpretation put forth by the respondent on expression 'present value of contract' to mean qualifying contract is contrary to the plain language used in clause 2.2.2.1 (ii) of the tender document. If the interpretation put forth by the respondent is accepted, the petitioner which is a public sector undertaking and has vast experience in execution of large railway projects would be excluded from consideration and contractors with little or no experience in large scale projects would be qualified.

17. For yet another reason, interpretation put forth by the respondent on the expression 'present value of contract' to mean qualifying contract cannot be accepted as the respondent is trying to read the expression 'qualifying' which is not used in clause 2.2.2.1(ii) of the tender document. The project in question has been conceived in public interest which would adversely be affected by non-consideration of a bid of public sector undertaking which admittedly has vast experience in execution of large railway projects across the country. The interpretation put forth by the respondent on clause 2.2.2.1(ii) does not deserve acceptance as the same would result in disqualification of the tenderer due to the reason beyond its control i.e. non-payment of amount which may be due to the bidder in previous contract.

18. For the aforementioned reasons, we conclude that the interpretation put forth by the respondent on the expression 'present value of contract' is arbitrary and unreasonable.

19. In so far as reliance placed by the respondent in ***State Trading Corporation of India Ltd., Vs The Commercial Tax Officer and others*** (supra) is concerned, suffice it to say that the challenge in the instant petition is based on violation of Article 14 which applies to all and not limited to citizens. The petitioner which is a Juristic person is entitled to benefit of Article 14. (See ***Charanjit Lal Chowdhary Vs Union of India*** [AIR 1951 SC 41]. Therefore, the decision in ***State Trading Corporation of India Ltd.***(supra) is of no assistance to the respondent in this case. Similarly, the contention that the petitioner is estopped from mounting challenge to the rejection of his bid as it had not challenged the rejection of bid in four previous contracts is misconceived.

(vii) **CONCLUSION:-**

20. For the aforementioned reasons, the order dated 27.01.2025 passed by respondent by which the technical bid submitted by the petitioner has been rejected is quashed and set aside. The respondent is directed to evaluate the financial bid of the petitioner and to proceed. Accordingly, the petition is allowed.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)