



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 15215 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. Executive Engineer, Mumbai Metropolitan]
 Region Development Authority (MMRDA),]
 having his office at Engineering Division,]
 5th Floor, New Administrative Building,]
 Bandra Kurla Complex, Bandra (E),]
 Mumbai – 400 051.]
 Email Id: [etendersupport@mailmmrda.](mailto:etendersupport@mailmmrda.maharashtra.gov.in)]
 maharashtra.gov.in] ... Respondents

Dr. Abhishek Manu Singhvi, Senior Counsel, a/w Mr. S.U. Kamdar, Senior Counsel, Mr. Zal Andhyarujina, Senior Counsel, Mr. Chirag Kamdar, Ms. Priyanka Sharma, 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, a/w Mr. Mukul Rohatgi, Senior Counsel, 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 Respondents in both Petitions.

Mr. Yatin Sakhalkar, representative of MMRDA.

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

**RESERVED ON: 15th May 2025.
PRONOUNCED ON: 20th May 2025.**

P.C.:-

- 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 Elevated Road Project, without first notifying the Petitioner of the fate of the Petitioner's Technical bid.
- 2) Respondent No. 1 (**MMRDA**) had on 27th July 2024 issued a notice inviting Tender for a the public infrastructure project namely, the Elevated Road Project with tender reference no. MMRDA/Elevated/Fountain Hotel Thane to Bhayander/2024 (Tender ID 2024_MMRDA_1061522_1) ("**said project**"). The said project envisages a 9.80 km bridge passing along the Vasai Creek and having an estimated value of approximately INR 6,000 crores, which is part of an extension of the Mumbai Coastal Road project and a part of the MMRDA's larger road expansion project involving the construction of approximately a 15 km stretch 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 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 11.30 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 Instruction to Bidders ("**ITB**") and in violation of the principles of natural justice.

5) The Petitioner did not however 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 intimation from MMRDA that financial bids would be opened on 13th May, 2025 at 11:30 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 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 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 principle of natural justice. It has serious consequences of depriving 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 scheduled for 13th May 2025 at 11:30 am, as it is just, necessary, and convenient to do so.

7) Dr. Singhvi Learned Senior Counsel appearing on behalf of the Petitioner, emphasised the necessity for MMRDA, a public authority, to follow principles of good governance, namely, to ensure that the tendering process is fair, non-discriminatory, transparent, and reasonable and presents a level playing field to all bidders. He contended that it was precisely for this purpose that guidelines had been issued by the PWD and CVC. He

submitted that absent explicit exclusion of these guidelines, their inclusion was implicit. He pointed out that in the present case, MMRDA had not explicitly excluded the said guidelines, and thus it was incumbent upon MMRDA to follow the same.

8) He then further pointed out that even the standard practice followed by the public authorities, such as MMRDA, for tender process, makes clear that for a fair, transparent and unbiased tender process, the fact of disqualification along with reasons thereof ought to be communicated prior to the opening of the financial bid thereby allowing sufficient time to a disqualified bidder to seek recourse as maybe available to it. He submitted that even if the PWD guidelines are found to be directory in nature, cogent reasons for deviating from them must be provided by MMRDA.

9) He then pointed out that Clause 4.1 of the PWD guidelines clearly sets out the procedure to be adopted by the tendering authority while opening the e-tenders. The clause is extracted herein for ready reference:-

“4.1 To avoid the unnecessary suspicion and to maintain the transparency, tenders/bids shall be opened in front of maximum possible bidders. Due to same reason if it is not possible for maximum number of bidders to attend the tender/bid opening process then the bid opening may be avoided. After opening of Envelop No.1 (Technical Bid) and after scrutiny of the document submitted by the bidder, list of qualification/ disqualification be communicated to the bidders and same shall be published on the web/portal on which e-

tender process is happening. The contractors who are disqualified, shall be intimated regarding the same along with the reasons for their disqualification.

In case, the disqualified bidder has any queries/objections, the same shall be attended by the tender opening authority by taking personal hearing and the same shall be taken on record. In case, the contractor has expressed his grievances to the Secretary (Roads/Buildings) & Principal Secretary (P.W.D.), then after resolving the grievances, revised result (about the qualification/disqualification) shall be published on website. Also, the same shall be communicated to the contractor and only after that, Envelope 2 (Financial Bid) shall be opened. Mention regarding this event shall be included in the Tender Document.

After completing the procedure as mentioned above, Executive Engineer shall take on record that the tender process happened so far is done in transparent manner and there is no complaint about the tendering process. After this, Envelop No.2 (Price Bid of the Bidder) may be opened. If the bidders do not remain present while opening the financial bids, then they shall be contacted again and bid shall be opened in presence of maximum number of bidders. If the bids received are less than 05, then the financial bid shall be opened in presence of minimum 02 bidders. If the number of bids received are more than 05, then the financial bid shall be opened in presence of minimum 03 bidders, so that the bid offer of each other will be known or disclosed to other bidders. Such kind of procedure will avoid creating any kind of doubt/suspicion against the officers of Public Works

Department. If the bidders, even after informing them to remain present for financial bid opening does not remain present, the bids may be opened in front of 03 witness”.

10) Dr. Singhvi pointed out that the aforesaid clause explicitly enumerates six procedural steps, which are required to be followed by the tendering authority, none of which have been complied with by MMRDA in the present case. He then also relied upon Clause 2 of the CVC guidelines dated 24th March 2005 to assert that the public authority was under an obligation to record specific and logical reasons on file for *inter alia* rejecting a bid. He further relied on the judgement of the Hon’ble Supreme Court in the case of ***Haffkine Bio-Pharmaceutical Corporation Limited V/s. NIRLAC Chemicals and Ors.***¹ case to submit that violation of CVC guidelines is sufficient to vitiate the entire tender process.

11) Dr. Singhvi then placed reliance upon clause 42.4 of ITB and pointed out that the same merely provided that MMRDA would notify each unsuccessful bidder of the decision concerning the award of the tender. He thus submitted that MMRDA could therefore simply award the contract without even informing the unsuccessful bidders of the reasons/basis on which they had been disqualified. This he submitted smacked of arbitrariness of the highest order and would infact permit MMRDA to act in a manner which was directly contrary to the PWD and CVC guidelines.

¹ (2018) 12 SCC 790

12) He then pointed out that since the technical bid was opened on 1st January 2025, it was not open to MMRDA to take a stand that informing the disqualified bidders of the reasons for their disqualification in writing would occasion delay to the project.

13) Mr. Tushar Mehta the Learned Solicitor General representing MMRDA submitted that the Petition was entirely misconceived and devoid of merit. He submitted that the Petitioner had deliberately did not to point out clause 11.3 of the ITB which specifically provided as follows :

“11.3 The Employer will not disclose information relating to the evaluation of e-tender submissions and recommendation of Contract Award to Bidders or any other persons not officially concerned with the Tender Process until the Employer communicates information on Contract award to all bidders”

14) He pointed out that the aforesaid clause made explicitly clear that MMRDA would not disclose information relating to evaluation of e-tender to bidders until such time that MMRDA communicates the information about the award of the contract to all the bidders. He thus submitted that it was not therefore presently open to the Petitioner to oppose the opening of the financial bid. He also took pains to point out that the Petitioner had accepted the terms of the tender unequivocally. He also submitted that though clause 42.4 of the ITB provided that MMRDA would notify regarding award of contract to unsuccessful bidders, MMRDA would furnish to the Petitioner the reasons for rejection of its technical bid and 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 defense that the Petitioner would only be relegated to a Suit for damages.

15) He then submitted that the project in question was a mega infrastructure project of vital public importance and thus relied on the judgement of the Hon'ble Supreme Court in the case of ***National High Speed Rail Corporation V/s. Montecarlo Ltd. & Anr.***² would squarely apply. He argued that the State's objective was to ensure that Mega Infrastructure projects, being of critical importance and bearing significant public interest, are completed expeditiously and with minimal interference to maintain cost efficiency.

16) In response Dr. Singhvi contended that the reliance placed on ***Montecarlo Ltd. (supra)*** to allege that MMRDA was contractually not obliged to intimate disqualification and reasons thereof till the award of the tender is not only arbitrary but also reeks of mala fides. He submitted that the clauses of the ITB are diametrically opposite to those in the case of ***Montecarlo Ltd.*** According to him, MMRDA'S attempt to draw a parallel between the present matter and ***Montecarlo Ltd.*** is wholly misplaced for the following reasons:

²(2022) 6 SCC 401

- (i) The project was fully funded through foreign investment.
- (ii) The fact of disqualification and reasons thereof were communicated; the judgement was delivered in the context of the project funded through foreign investment. Such clauses were sustained, as the logic for the same was that the project was funded through foreign investment, and it was necessary to avoid undue delays in the tender process, as the same may have a cascading effect, and thus, midway interference was necessarily to be avoided.

17) In the context of the above submissions, the short question which falls 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.

18) After having heard Learned Senior Counsel for the Parties, and having perused the terms of the tender, we find we are unable to agree with the submissions of the Petitioner for the following reasons :

A. Clause 11.3 of the ITB specifically provides as follows viz.

“11.3 The Employer will not disclose information relating to the evaluation of e-Tender Submissions and recommendation of Contract award to bidders or any other persons not officially concerned with the Tender process until the Employer communicates information on the Contract award to all

Bidders.”

The above clause clearly states that MMRDA will not communicate information relating to the evaluation of the tender until the Employer communicates information on the Contract award to all Bidders. Thus, given that presently there is no final notification of the award, the stage to seek such information, in our view, has not arisen.

B. The Petitioner has omitted to set out and/or deal with clause 11.3 of the ITB in the Petition. In our view it was incumbent upon the Petitioner to have set out the said clause and explained why the same was not applicable. The Petitioner has admittedly not done so, and thus we find much merit in the submission of Mr. Mehta, that the Petitioner is guilty of suppression of a material fact.

C. 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 a 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. Also, clauses 36 & 38 clearly indicate that the Employer shall evaluate and consider only those packets which are responsive. The technical bids of all other bidders are therefore deemed to be non-responsive and thus excluded from consideration. The Petitioner has accepted these clauses as well as clause 11.3 and participated in the tender.

Thus, in our view, it would now not be open to the Petitioner to agitate to the contrary. *Furthermore*, it is also the contention of MMRDA that the terms of the tender contemplate that reasons shall be communicated to the unsuccessful bidder only after the award of the contract. It is well settled that the author of the tender document is the best person to interpret such a document and the requirements under it. Thus, at this stage, we find that it is not open to the Petitioner to interpret the tender conditions in a manner which is contrary to the interpretation of MMRDA.

D. *Prima facie*, we find much merit in the submissions of Dr. Singhvi that the ITB is contrary to the PWD and CVC guidelines. Having perused the terms of the tender, we are of the *prima facie* view that the same are opaque and such that could give rise to the tendering authority acting in an arbitrary and non-transparent manner. However, as noted above, the Petitioner has accepted the terms of the tender by participating in the tendering process and has not challenged the same. In our view, it was incumbent on the Petitioner to have challenged the terms of the tender before participating in the same. The Learned Solicitor General has, however, made it explicitly clear that the Petitioner shall (i) be furnished with the reasons for rejection of its technical bid and (ii) all rights and contentions of the Petitioner shall be kept open, including challenging the rejection of its technical bid and the award of the tender by way of Writ Petition. He further clarified that on the award of the contract, the State shall not take the defence of *fait accompli* to

relegate the Petitioner only to a claim for damages. Thus, in the facts of the present case, the Petitioner's reliance upon the judgement in the case of *Haffkine Bio-Pharmaceutical (supra)* would not be of any assistance to the Petitioner.

E. 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 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.

19) Hence for the aforesaid reasons and given the express clarification of the Learned Solicitor General that all the rights and contentions of the

Petitioner are kept open as noted in para 14 above, we are not inclined to at this stage to interfere in said tender process.

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

21) The Petition is thus dismissed. There shall be no orders as to costs.

(ARIF DOCTOR, J.)

(KAMAL KHATA, J.)

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

23) 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.)