



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.17090 OF 2024

- 1) M/s. Barkat Contractors Pvt. Ltd.,
Having its Registered Office at
Shop No. 12, Vishwakarma Estate,
Phase-2, 100ft Road, Vasai West,
Thane - 401 105, Maharashtra.
- 2) M/s. Ratnaprabha Facility Services
LLP, Having its office at S.No. 31/8,
Lane No. 5, Borate Wasti,
Khardi, Pune, Maharashtra, 411014.

...Petitioners

Versus

- 1) Bhiwandi Nizampur City Municipal
Corporation, Old ST Stand,
New Building, Anand Dighe Chowk,
Opp. Rajiv Gandhi Flyover,
Bhiwandi, Maharashtra – 421302.
- 2) Municipal Commissioner,
Bhiwandi Nizampur City Municipal
Corporation, Old ST Stand,
New Building, Anand Dighe Chowk,
Opp. Rajiv Gandhi Flyover,
Bhiwandi, Maharashtra – 421302.
- 3) Deputy Commissioner,
Bhiwandi Nizampur City Municipal
Corporation, Old ST Stand,
New Building, Anand Dighe Chowk,
Opp. Rajiv Gandhi Flyover,
Bhiwandi, Maharashtra – 421302.
- 4) M/s. Dimpal Enterprises,
70, Kacheri Pada Road,
Behind Remand Home,
Kacheri Pada, Bhiwandi,
Thane – 421302.

5) M/s. Chavan Enterprises,
45/2-3, Shivsagar Rahivashi Sangh,
Bhatwadi Opp Samaj Kalyam Kendra,
Ghatkopar West, Mumbai – 400084.

6) M/s. Sai Baba Enterprises,
Flat No. 350, Vehele Village,
Post Pimplas Block,
Near Shiv Mandir, Bhiwandi City,
Thane - 421311.

.... Respondents

Ms. Shilpi Jain i/b. Ms. Jaya Bagwe, for the Petitioners.

Mr. Dilip Bodake, for Respondent Nos.1 to 3.

Mr. Ravi Prakash Jadhav a/w Ms. Richa Khatu, for Respondent No.4.

***CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.***

RESERVED ON : 22nd APRIL, 2025

PRONOUNCED ON : 30th APRIL, 2025

JUDGMENT (PER M. S. KARNIK, J.) :

1. Petitioner No.1 - M/s. Barkat Contractors Pvt. Ltd. and
Petitioner No.2 - M/s. Ratnaprabha Facility Services LLP
challenge the decision dated 9th October 2024 of the
Respondent No.1 - Bhiwandi Nizampur City Municipal
Corporation ('Corporation' for short) disqualifying the
Petitioners and thereby declaring Respondent Nos. 4 to 6

technically eligible. The order dated 13th October 2024 passed by the Corporation is also challenged, whereby the Respondent No.4 is declared as the lowest bidder. The work order dated 20th December 2024 in favour of Respondent No.4 is also under challenge.

2. Briefly stated the facts are that the Corporation issued e-tender on 7th September 2024 for door-to-door collection and transportation of Municipal Solid Waste up to disposal/treatment site for Zone II in the Bhiwandi Nizampur City for the period of three years. The Petitioners through their partnership firm M/s. Barkat Contractors submitted the bid on 29th September 2024 along with all the required documents, credentials and experience certificates as per the tender format. The technical bids were opened on 1st October 2024. There were five bidders including the Petitioner. The Petitioners downloaded all the documents pertaining to the other bidders/applicants which were submitted along with the tender.

3. Upon examining the bid documents, the Petitioners found that out of the total 16 mandatory qualifications,

Respondent Nos.4 to 6 had failed to meet approximately 12–13 criteria. The Petitioners brought the same to the attention of the Corporation on 8th October 2024 and requested to investigate the matter and if found to be correct, disqualify Respondent Nos.4 to 6.

4. The Corporation issued email to the Petitioners dated 9th October 2024 stating that the Technical Evaluation Committee had rejected their bid. The Corporation uploaded the technical evaluation report on its website on 9th October 2024. The grievance of the Petitioners is that despite the Petitioners' objection that Respondent Nos.4 to 6 have submitted incomplete and false documents, they were declared to be technically eligible. The financial bid was opened on 9th October 2024. The Petitioners vide a letter dated 11th October 2024 wrote to the Corporation objecting to the declaration of Respondent No.4 as technically and financially eligible.

5. Ms. Shilpi Jain, learned counsel for the Petitioners submitted that :-

"i) R4 had filed the forged ITR documents as E-filing acknowledgement number on the ITR filed for AY 2023-24 and 2024-25 are same which shows a clear case of forgery.

ii) Bar code numbers on both the ITR i.e, AY 2023-24 and AY 2024-25 are same.

iii) Computation on both the ITR for the AY 2024-25 and 2023-24 were found to be same.

iv) Submitted labour License that had already expired on 30th September 2022.

v) CA certificate does not have a date and the UDIN number.

vi) Application Reference Number on GST-36 Turnover Details for quarterly returns in both the AY 2024-25 and AY 2023-24 is same."

6. Learned counsel for the Petitioners submitted that the Respondent No.5 is not technically eligible for the following reasons :

"i) Acknowledgement No. mentioned in the ITR submitted by R5 for AY 2024-25 is exactly same as the acknowledgement number in the ITR submitted by R4 for AY 2023-24 & AY 2024-25.

ii) There are two different IT Acknowledgement number in the ITR for AY 2024-25.

iii) Turnover certificate issued by CA is also forged. It shows the turnover of Rs. 930.95 crores but on examination of the UDIN Number, the certificate shows a turnover of 822.82 crores for the year 2022-23.

iv) Submitted forged experience certificate alleged to be issued by Akola Municipal Corporation, which on telephonic verification was confirmed that no such certificate was ever issued."

7. So far as Respondent No.6 is concerned, learned counsel for the Petitioners submitted that Respondent No.6 is

not technically eligible on the following grounds:

"i) R6 had submitted the UDYAM Registration Certificate as per which Respondent No. 6 is categorized as 'Micro' for the AY 2024-25, 2023-24 and 2022-23. Despite this, the Contractor has submitted the false turnovers of Rs. 8,85,48,600/-, 6,19,20,000.0 and 2,16,90,500/- for the respective assessment years which are completely contradictory to the statement that Respondent No.6 is a micro enterprise.

ii) Respondent No. 6's submitted work order in the name of Saibaba Transport, while the bid itself was submitted under the name of Saibaba Enterprises. No details about Saibaba Transport were provided in the tender. The only document submitted to the tendering authority was an agreement claiming Saibaba Transport and Saibaba Enterprises were separate entities with the same proprietor. However, there is no legal concept of merging two proprietary firms."

8. Learned counsel submitted that despite these objections, the Corporation issued a communication dated 16th October 2024 declaring Respondent No.4 as the lowest bidder. This Writ Petition was filed on 25th October 2024.

9. Learned counsel for the Petitioners submitted that belatedly on 14th November 2024 the Corporation provided the official reason for the Petitioners' disqualification from the tender process. The Petitioners' tender was rejected because the document presented as a partnership deed was in nature of Joint Venture Agreement, as according to the Corporation the Petitioners cannot form Partnership Firm. The extract of

the letter dated 14th November 2024 reads as under :-

"Vide ref no.1, Bhiwandi Nizampur municipal corporation has checked and verified the documents in Joint venture. As per the Tender condition Joint venture is not allowed to participate in tender so your bid has been disqualified. Furthermost you have claimed that you have submitted a partnership deed so as per the tender requirement" partnership deed is that document which is prepared between the partner before establishing the firm or during or in between of the single firm for deciding the shareholding of partner in company" but you have submitted a document showing two different firm collaborating to form a partnership which is nothing but a joint venture. So accordingly, your bid has been disqualified."

10. Assailing such an approach of the Corporation, learned counsel for the Petitioners submitted that as per the Partnership Act, any two persons who are separate legal entities can form a partnership firm. Learned counsel submitted that since the Partnership Agreement was executed between the two separate legal entities i.e. between Petitioner No.1 which is a corporate entity and Petitioner No.2 which is an LLP, the same is allowed under the Partnership Act. Learned counsel therefore submitted that the stand of the Corporation that two firms cannot form a partnership is incorrect.

11. Learned counsel also assails the work order as according to her not only is the decision of the Corporation to

disqualify the Petitioners is arbitrary and capricious but the decision of the Corporation to issue the work order in favour of Respondent No.4 holding it to be technically qualified and thereupon accepting the financial bid as L1 is completely arbitrary and illegal for the reason that the Respondent No.4 has filed forged and fabricated documents. Learned counsel submitted that it is in the public interest that the tender process should be cancelled as the very basis of submission of bid by the Respondent No.4 was fabrication and falsification of documents.

12. Learned counsel filed an additional affidavit on 8th January 2025 annexing a copy of the Partnership Deed in the name of M/s. Barkat Contractors and the Petitioner No.2 and Memorandum of Association of Petitioner No.1. Learned counsel emphasised that Section 4 of the Partnership Act permits constitution of a firm or partnership between one or more person. She submitted that since the partnership deed was executed between a private limited company and LLP, which are both separate legal entities, the same is allowed under the Partnership Act. Learned counsel was at pains to point out that all the documents of Respondent No.4 are

forged and new documents are submitted by the Respondent No.4 after the process was completed.

13. On the other hand, learned counsel for the Respondents submitted that the decision making process cannot be faulted as on the basis of the documents submitted and in terms of the tender conditions, the Petitioners were held ineligible. It is further submitted that the Respondent No.4 was issued the work order as it was found to be technically eligible.

14. We have heard learned counsel. We have perused the memo of the Petition, the materials on record and the pleadings. At the outset let us see the instructions to the bidders in the tender document. Clause 2.4 provides as under:-

"2.4 No Joint Venture and subcontracting will be allowed."

15. Further the eligibility criteria, opening and evaluation of bids in terms of Clause 3 of the tender document provides that "Bidder may be entities registered under the Indian Companies Act, 1956 or entities registered under the Indian

Trust Act, 1882 or Public Trust Act, 1959 or Societies registered under the Society Registration Act, 1860 or Proprietorship firm or Partnership firms, LLP, Private Limited."

16. The Petitioners were disqualified by the decision dated 9th October 2024 of the Corporation. The Corporation had issued the notice inviting the online tenders (E-Tender) for the period of three years for door-to-door collection and transportation of Municipal Solid Waste up to disposal/treatment site for Zone II of the Corporation from well qualified and experienced agencies / Contractors/Firms/ Company (public limited/private limited) on web portal. The contract value of the work for the period of one year was approximately Rs.7.30 Crores and time limit for completion is three years from the date of issue of the work order.

17. The Petitioners' e-tender was scrutinised and technically evaluated by duly constituted Technical Evaluation Committee. The Petitioners were declared disqualified because of violation of terms and conditions of Clause 2.4 which provides no joint venture and subcontracting will be allowed.

The Petitioner No.1 is a private limited company and Petitioner No.2 is a partnership firm and both these entities have submitted e-tender and therefore due to joint venture the Petitioners were declared as disqualified as per the terms and conditions of Clause 2.4. The Respondent Nos.4 to 6 were found to be qualified.

18. Exhaustive arguments are advanced by learned counsel for the Petitioners that having regard to the provisions of the Partnership Act, the Petitioner Nos.1 and 2 fit into the definition of a Partnership Firm and that the Petitioners in such circumstance cannot be regarded as a joint venture, but according to learned counsel the Petitioners, have to be regarded as partnership firm. Admittedly, the Petitioner No.1 is a private limited company and Petitioner No.2 is a partnership firm and both the entities have submitted e-tender. The Corporation construes the Petitioners to be a joint venture which as per the tender condition is not allowed to participate in the bidding process. According to us, the Corporation is best suited to interpret the tender document being an employer which has issued the tender document.

The interpretation of the Corporation that the Petitioner No.1 being a private limited company and Petitioner No.2 being LLP constitutes a joint venture cannot be regarded as perverse considering the tender document as a whole. The argument of the learned counsel for the Petitioners that 'for the purpose of the Partnership Act the Petitioner No.1 and Petitioner No.2 constitutes a partnership firm and therefore the Petitioners are qualified' is an argument which is completely misplaced. The Corporation has to get the work executed. The Corporation therefore knows its requirements.

19. The bid submitted by the Petitioner No.1 a private limited company and Petitioner No.2 a partnership firm, if regarded as a joint venture by the Corporation is an approach which we do not find to be unreasonable, arbitrary or capricious. The tender document prohibits participation by a joint venture. That the Petitioner No.1 and Petitioner No.2 constitutes a partnership in terms of the Partnership Act is hardly of any relevance, because in terms of the tender document, a partnership firm or LLP individually is permitted to bid but what is prohibited is a joint venture. The

interpretation of the Corporation that a bid submitted jointly by the partnership firm and a private limited company has to be regarded as a joint venture is not a view which can be regarded as perverse warranting interference.

20. Further, we find from the stand of the Corporation that the Petitioners in the cause title and paragraph 2 of the Petition stated that Petitioner No.2 is an LLP firm incorporated under the Limited Liability Partnership Act having its registered office at the address set out in the cause title and Petitioners No.1 and Petitioner No.2 are partners in the partnership firm M/s. Barkat Contractors. However, while submitting the e-tender, the Petitioners did not disclose the said fact to the Corporation. The Petitioners did not enclose and supply the said partnership deed and Memorandum of Association to the Corporation and therefore the Technical Evaluation Committee disqualified the Petitioners on the basis of the report submitted to the Corporation. Pursuant to the directions of this Court, the Petitioners brought on record the said partnership deed and Memorandum of Association. In any case as we have found favour with the interpretation of the

Corporation that the Petitioners constitute a joint venture and therefore are disqualified, the belated submission of the partnership deed and Memorandum of Association on 8th January 2025 in this Court can be of no assistance to the Petitioners in respect of the present tender where even the work order dated 20th December 2024 has been issued and the work has commenced. We therefore do not find any merit in this submission of learned counsel for the Petitioners.

21. Once the Petitioners are disqualified and not eligible to participate, in view of the law laid down by the Supreme Court in **Raunaq International Ltd. vs. I.V.R. Construction Ltd. And Ors.**¹ any judicial relief at the instance of the Petitioners who are disqualified is misplaced.

22. Learned counsel for the Petitioners relied on the decision of this Court in **Shah Investments, Financials, Developments & Consultants Pvt. Ltd. vs. State of Maharashtra, through Principal Secretary and others**². It is pointed out that the contention raised by the Petitioners in respect of alleged wrongful acceptance of bid of Respondent

¹ (1999) 1 SCC 492

² 2014 SCC OnLine Bom 1561

No.3 deserves consideration and accordingly this Court tested the contention regarding disqualification of Respondent No.3 therein. The decision in *Shah Investments, Financials, Developments & Consultants Pvt. Ltd.* (supra) is distinguishable on facts. For one, in paragraph 37 this Court was considering a case where there were several deficiencies in the tender document of Respondent No.3 itself and secondly, found that the Corporation had hurriedly taken a decision to award the tender. It is under those circumstances that the Petition was allowed and the work order was quashed. The facts in the present case are completely different.

23. Nonetheless, in order to satisfy ourselves with the submission of learned counsel regarding the documents furnished by Respondent No.4 which according to the Petitioners are forged and fabricated, let us see the stand of the Corporation. The Corporation by the email dated 4th October 2024 directed the Respondent No.4 to submit the documents enclosed along with the tender and sought clarifications. All the required original documents were

furnished on 19th November 2024 as mentioned in the email in the proper format given in the tender document. The Corporation had forwarded the tender documents of Respondent No.4 to the All India Institute of Local Self Government. Sometime in October 2024 the All India Institute of Local Self Government addressed a communication to the Corporation that a scrutiny of the submitted tender documents was made and necessary clarifications were sought. It was indicated that if the documents are not submitted within the timeframe stipulated the bidders will be disqualified.

24. All India Institute of Local Self Government issued a letter dated 8th November 2024 to the Corporation to obtain certified copies of documents from Respondent Nos.4 to 6 along with a confirmation from their Chartered Accountant validating the document's authenticity. The Corporation sent letters dated 14th November 2024 to Respondent Nos.4 to 6 instructing them to provide all the original documents submitted for the tender, along with a true copy and statement from a Chartered Accountant confirming the

authenticity of the documents and their respective UDIN numbers.

25. The following chart indicates that the All India Institute of Local Self Government recommended disqualification of the Petitioners whereas on scrutiny of the documents shared by the bidders, Respondent No.4 - M/s. Dimpal Enterprises was recommended as qualified. We thus find that there is a scrutiny of the documents shared by the bidders by the All India Institute of Local Self Government. The summary of technical evaluation by the Regional Director, All India Institute of Local Self Government so far as the Petitioners (Barkat Contractors) and Respondent No.4 (Dimpal Enterprises) is concerned reads thus :-

Sr. No.	Zone No.	Tender Id	Name of Bidder	Status of Tender	Remark
1	Zone II	2024_BNMC_10822167_1	Barkat Contractors & Ramprabha facilities Pvt Ltd	Recommendation Disqualified	Violation of tender clause 2.4 "No Joint Venture and Subcontracting will be allowed" Recommendation -Disqualified
3	Zone II	2024_BNMC_10822167_1	Dimpal Enterprises	PMC Recommend to email for Clarification & pending document submission. 1.Incorporation Certificate:- UDYAM not submitted. 2.Letter for The Bid Submission in the format attached at Appendix-I:- not Submitted.	Submitted all the document. Recommendation - Qualified For detail Please check Annexure - I (kindly collect True hard Copy from

				<p>3. Experience Certificate/ work order copy of similar work:- not submitted.</p> <p>4. STATEMENT NO. II :- not Submitted.</p> <p>5. Financial Capacity of The Bidder in the format attached at Appendix I Annexure- III :- Not Submitted as per Format.</p> <p>6. Legal Capacity in the format attached at Appendix I Annexure-IV :-not Submitted.</p> <p>7. An affidavit regarding no relation or partnership with the corporation member in prescribed for on stamp paper of Rs.100. Appendix I Annexure-V :- not Submitted.</p> <p>8. An affidavit regarding false document in prescribed format on stamp paper of 500/- Appendix 1 Annexure-VI.- not submitted.</p> <p>9.Anti-Collusion Certificate in the format attached at Appendix-IV :-not Submitted.</p> <p>10. Bidder's duly audited balance sheet and profit and loss account for the preceding three years; (i.e. 2021-22, 2022-23 and 2023-24) if year 2023-24 not audited then valid reason with declaration by CA along last three-year statement (i.e. 2020-2021, 2021-22 and 2022-23) :-CA sign stamp not present.</p> <p>11.CV of the skilled resources as mentioned :-only 1 cv attached, required 4 more.</p> <p>12. Certificate from the statutory auditor regarding Eligible Project :- submit with CA sign.</p>	successful bidder)
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26. We are satisfied with the decision making process adopted by the Corporation. The Petitioners may have their

own independent assessment of the documents furnished by the Respondent No.4, however, we are concerned with the approach adopted by the Corporation while scrutinising the documents. Once we find that the procedure adopted is reasonably fair and transparent, it is not possible for us to extend the scope of judicial scrutiny merely because the Petitioners are not satisfied and insist for further scrutiny by any independent body.

27. We therefore do not find any merit in this Writ Petition. The Writ Petition is dismissed.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)