



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

WRIT PETITION (L.) NO. 6662 OF 2025

**Anik Industries Ltd**, through its Authorized Representative Mr. Arvind Jain S/o Late Shri S.C. Jain, Occ.Service, Age- 50 Years Registered office -610, Tulsiani Chambers, Nariman Point, Mumbai 400021 Corporate office - 2/1, South Tukoganj, Indore.

....*Petitioner*

: *Versus* :

1. **Maharashtra Airport Development Company Ltd.** through Vice Chairman & Managing Director R/o — 8" Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai 400005
2. **Maharashtra Airport Development Company Ltd.** through its Tender Committee R/o — 8" Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai 400005.
3. **M/s. Kukreja Infrastructures** Plot No. 17, Sushila Layout, Sugatnagar, Jaipatka Ring Road, Nagpur —440014.

....*Respondents*

---

**MR. NITIN THAKKER, SENIOR ADVOCATE** with Mr. Abhijeet Desai, Mr. Vijay Singh, Mr. Adarsh Jain, Ms. Daksha Punghera and Mr. Digvijay Kachare i/by. Desai Legal LLP, for the Petitioner.

**MR. SHARDUL SINGH** with Ms. Sayali Sawant, Mr. Hridyanshi Sharma and Mr. Ninad Thikekar, for Respondent Nos.1 and 2.

**DR. MILIND SATHE, SENIOR ADVOCATE AND MR. NIKHIL SAKHARDANDE, SENIOR ADVOCATE** with Mr. Pralhad Paranjape, Mr. Aditya Mhase, Mr. Manish Kelkar and Mr. Anshuman Sambre, for Respondent No.3.

---

CORAM : ALOK ARADHE, CJ. &  
SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 18 JUNE 2025.

JUDGMENT PRONOUNCED ON : 26 JUNE 2025.

**JUDGMENT:** (*Per: Sandeep V. Marne, J.*)

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for hearing and final disposal.

2) The Petitioner has filed the present petition under Article 226 of the Constitution of India challenging the action of Respondent Nos.1 and 2 in rejecting its technical bid in the tender process initiated for allotment of lease of plot of land. Petitioner has sought declaration that it is technically qualified and has challenged the Letter of Allotment issued to Respondent No.3.

3) Brief facts leading to filing of the petition are as follows :-

In September 2024, Respondent Nos. 1 and 2 initiated the process of leasing Plot No. 18, Sector 22, admeasuring 47347.975 sq. meter (approx. 11.69 acres) located out of Special Economic Zone (**SEZ**) in MIHAN, Nagpur for residential and commercial use. Upto the last date of submission of bids on 26 September 2024, it was noticed that only three bidders had participated in the bidding process, which excluded Respondent No. 3. On account of lukewarm response to the tender process and in terms of the Guidelines issued by Central Vigilance Commission (**CVC**), Respondent Nos.1 and 2 decided to cancel the tender. Accordingly, a fresh tender was floated on 10 October 2024 for grant of lease of the

subject plot. The last date for submission of the bids was 5 November 2024, during which queries raised by the prospective bidders were addressed. The Petitioner apparently did not attend the pre-bid meeting. On the basis of clarifications given to the prospective bidders in the pre-bid meeting, a corrigendum was issued by Respondent Nos.1 and 2, which according to the tender conditions, became part of the tender document. The corrigendum *inter alia* altered the technical eligibility criteria. By way of corrigendum, the last date of submission of bids was extended from 5 November 2024 to 18 November 2024. The Petitioner submitted its bid on 18 November 2024. Total five bidders had submitted their bids. The Technical Committee evaluated the bids and prepared a report dated 29 November 2024, in which it was found that the Petitioner and M/s. R. Sandesh Infrastructure Pvt. Ltd. had failed to submit the requisite documents and therefore they were disqualified. Respondent Nos.1 and 2 held three entities, including Respondent No.3, to have technically qualified in the tender process. Finally, the bids were opened on the same day and it was found that Respondent No.3 was the highest bidder quoting the rate of Rs. 8,407 per sq.mtr. Accordingly, Letter of Acceptance dated 2 December 2024 was issued to Respondent No.3.

4) Petitioner sought information under the Right to Information Act, 2005 for knowing reasons for rejection and requisitioned the entire Note Sheet relating to the tender. Petitioner also made representation against the rejection of its bid on 2 December 2024. In the meantime, Respondent No.3 made the payment of first installment of Rs.12,10,18,141/- to Respondent Nos.1 and 2. Petitioner received copies of Technical Evaluation Report on 6 January 2025, which reflected the reasons for rejection of its technical bid as (i) failure to submit information as per Exhibit-IV and (ii) non-compliance of experience certificate of construction of residential/commercial project with atleast 6 lakh square feet built-up area. On 14 January 2025, Petitioner complained about

rejection of its bid and alleged that Respondent No.3 submitted forged documents in support of its bid. By email dated 22 January 2025, Respondent Nos. 1 and 2 informed the Petitioner that its bid was rejected on account of non-fulfillment of qualifications of technical criteria. On 26 February 2025, the Petitioner has filed the present petition challenging rejection of its bid and award of the plot in favour of Respondent No.3.

5) On 10 March 2025, this Court directed that any further action in relation to allotment of plot to Respondent No.3 shall be subject to the final outcome of the petition. Since the pleadings in the petition are complete, the petition is taken up for hearing and disposal with the consent of the learned counsel appearing for the parties.

6) Mr. Thakker, the learned Senior Advocate appearing for the Petitioner would submit that rejection of Petitioner's bid by Respondent Nos.1 and 2 is wholly arbitrary, irrational and perverse. That the reason of rejection of Petitioner's bid for failure to submit information in Exhibit-IV is totally baseless. That Exhibit-IV appended to the corrigendum merely expected the bidders to submit summary of information to demonstrate possession of experience of having executed similar projects. He would submit that Petitioner inadvertently filled up and submitted the summary in old format in Exhibit-IV appended to the original tender document. He would compare the information sought by Respondent Nos.1 and 2 in Exhibit-IV format attached to original tender documents and the one attached to the corrigendum to demonstrate that most of the information was common. He would submit that only information relating to area of development was altered in the new format from '*land area*' to '*built-up area*'. In any case, according to Mr. Thakker, the summary of information expected to be submitted alongwith the prescribed format under Exhibit-IV was already made available to Respondent Nos.1 and 2 through supporting documents. That the exact built-up area of construction executed by the

Petitioner is easily discernible from the experience documents filed alongwith the bid. That therefore rejection of Petitioner's bid on hyper-technical reason of non-submission of summary of information in prescribed format is liable to be set aside. That in any case, the Petitioner ought to have been given an opportunity to submit necessary summary information in prescribed format rather than rejecting the bid by adopting hypertechnical approach. Mr. Thakker would submit that Exhibit-IV cannot be treated as a mandatory document, in absence of which, decision for awarding of contract could not be taken in the impugned tender process. He would submit that the law is otherwise well established that non-submission of documents, which are merely ancillary in nature, cannot be a ground for rejection of bid. In support of his contention, he would upon judgment of the Apex Court in *Poddar Steel Corporation Versus. Ganesh Engineering Works and Ors.*<sup>1</sup>. He would also rely upon judgment of Division Bench of this Court in *Shalby Limited and another Versus. State of Goa and others*<sup>2</sup>.

7) Mr. Thakker would then take us through the second reason of rejection of Petitioner's bid of not fulfilling the experience of having carried out residential/commercial construction of 6 lakhs square feet built-up area. He would submit that Petitioner's experience certificate has erroneously been rejected only on account of use of the words 'Assembly' in the Certificate of Architect as well as in the Occupancy Certificate. He would submit that in the State of West Bengal, various commercial uses are collectively referred to as 'Assembly'. He would draw our attention to the Certificate issued under the RERA Act depicting that the construction carried out by the Petitioner is for both, residential as well as commercial use. He would submit that Petitioner's bid has been erroneously rejected without considering the position that it actually has the experience of

---

1 (1991) 3 SCC 273

2 2012 (1) MH.L.J. 533

having constructed the requisite quantity of construction for residential and commercial use.

8) Mr. Thakker would then question the eligibility of the third Respondent to participate and qualify in the impugned tender process. He would submit that Respondent No.3 relied on certificate of the Architect, which raised false claim of having completed construction in respect of area admeasuring 1,92,914.598 sq.ft. of the building-M/s. Kukreja Infinity East. That in the summary submitted by Respondent No.3 in Exhibit-IV format, it claimed that the construction of the Project-M/s. Kukreja Infinity East involved 1,92,914.598 sq.ft. built-up area was completed on 18 June 2023 when infact the Occupancy Certificate issued in respect of the said project was only in respect of ground plus podium floor with only 12,000 sq. ft. of built-up area. That the Architect of the Petitioner also falsely certified completion of the said project with built-up area of 1,92,914.598 sq.ft. when infact the construction of the building was incomplete. He would also take us through the Architect Certificate uploaded on RERA website to demonstrate that only 47% work of slabs of super structure above stilt floor was complete. He would therefore submit that Respondent No.3 has relied on false certificate of Architect and its bid ought to have been disqualified. Mr. Thakker would blame Respondent Nos.1 and 2 in blindly relying on certificate of the Architect by ignoring the actual construction demonstrated by the Petitioner. He would rely on judgment of the Apex Court in **Banshidhar Construction Private Limited Versus. Bharat Coking Coal Limited and Ors.**<sup>3</sup> in support of his contention that Petitioner is entitled to question eligibility of the third Respondent notwithstanding rejection of its technical bid. Lastly, Mr. Thakker would submit that acceptance of bid of the Petitioner has resulted in loss for Respondent Nos.1 and 2. That Petitioner has quoted rate of Rs.12,889/- per sq. meter as against the rate of Rs.8,407/- per square meter of

---

3 (2024) 10 SCC 273



Respondent No.3. That therefore Respondent Nos.1 and 2 would incur loss of Rs.22 crores on account of erroneous acceptance of bid of the third Respondent. Mr. Thakker would accordingly submit that the action of Respondent Nos.1 and 2 in rejecting Petitioner's bid and in allotting the plot to Respondent No.3 is clearly arbitrary and irrational and therefore interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is clearly warranted.

9) The petition is opposed by Mr. Singh, the learned counsel appearing for Respondent Nos.1 and 2. He would submit that the Petitioner's bid has rightly been rejected on account of failure to submit the mandatory documents. He would submit that the Petitioner has suppressed the corrigendum, as well as Exhibit-IV appended thereto. As per the tender conditions, the qualifications issued in the pre-bid meeting vide corrigendum also formed part of the prescribed eligibility criteria. That the corrigendum made it mandatory to submit summary in format at Exhibit-IV. Petitioner not only suppressed the corrigendum and the format in Exhibit-IV, but has claimed ignorance thereof in the rejoinder. That Petitioner however took benefit of the extended date for submission of his bids from 5 November 2024 to 18 November 2024 and therefore it cannot feign ignorance in respect of the corrigendum. That Petitioner cannot selectively take benefit of the corrigendum and then proceed to suppress the same with a view to escape the liability arising from non-submission of mandatory information in Exhibit-IV. Mr. Singh would submit that Condition No.3 in Exhibit-IV clearly provided that submission of summary in Exhibit-IV as a mandatory requirement. That Respondent Nos.1 and 2 have fairly conducted the impugned tender process as Petitioner is not the only entity who is disqualified on account of non-submission of the summary under Exhibit-IV and another bidder M/s. R. Sandesh Infrastructures Pvt. Ltd. has also been disqualified for the very same reason indicating absence of any bias towards the Petitioner. In

support of his contention that failure to submit mandatory documents in prescribed format can entail rejection of bid, Mr. Singh would rely upon judgment of W.B. State Electricity Board Versus. Patel Engineering Co. Ltd and Ors.<sup>4</sup>

10) So far as the eligibility of the third Respondent is concerned, Mr. Singh would clarify that the bidders had complained about the requirement of the Occupancy Certificate being produced to demonstrate completion of construction. That the bidders had complained that issuance of Occupancy Certificate many times gets delayed and that therefore bidders must be given an opportunity to rely upon construction actually carried out at the site in absence of issuance of Occupancy Certificate. He would therefore submit that it is an otherwise normal practice to rely upon certification by the experts such as Chartered Accountants, Engineers, Doctors, Architects etc. and that there was nothing wrong on the part of Respondent Nos.1 and 2 to rely upon Certificate of Architect furnished by Respondent No.3 alongwith its bid. He would submit that Respondent Nos.1 and 2 have objectively evaluated the bid of Respondent No.3 and adjudged it as technically qualified. Lastly, Mr. Singh would submit that mere higher quote by the Petitioner cannot be a reason alone for allotment of plot in its favour as the tendering authority is expected to act fairly and in strict adherence to the tender conditions. That once the bid of the Petitioner is found to be technically non-responsive, the financial quote made by it becomes irrelevant. That Respondent Nos.1 and 2 have not opened the financial bid of the Petitioner and therefore the allegation of higher bid made by it becomes irrelevant.

11) Dr. Sathe, the learned Senior Advocate appearing for Respondent No.3 would oppose the petition. He would submit that

---

<sup>4</sup> (2001) 2 SCC 451



Petitioner has rightly been adjudged technically disqualified on account of failure to submit information in Exhibit-IV, which was a mandatory requirement. That Petitioner is not entitled to invoke jurisdiction of this Court under Article 226 of the Constitution of India having suppressed the factum of issuance of corrigendum as well as the requirement for submission of summary information in Exhibit-IV. That Petitioner selectively took the benefit of extended date for bid submission, but suppressed the corrigendum after noticing that it got technically disqualified on account on non-submission of information in the format prescribed in Exhibit-IV. So far as the eligibility of Respondent No.3 is concerned, Dr. Sathe would submit that Petitioner has erroneously relied upon the Occupancy Certificate issued in September 2023 when infact the construction of project of the third Respondent had progressed substantially by November 2024, when the bids were submitted. He would highlight use of the words '*as on date*' in the eligibility criteria depicting that the bidders were entitled to rely upon entire construction carried out at the site as on the date of submission of the bid. He would submit that in respect of the Project-M/s. Kukreja Infinity East construction of built-up area of 1,92,914.598 sq.ft. was actually complete as on the date of submission of bid and that there is nothing erroneous on the part of the Architect in certifying the said construction. He would also rely upon certificates uploaded on RERA website to demonstrate that construction of the project upto 90% was complete by November 2024. He would rely upon judgment of the Apex Court in *Central Coalfields Limited & Anr. Versus. SLL-SML (Joint Venture Consortium) and Ors.*<sup>5</sup> in support of his contention that Courts cannot hold a particular tender condition to be non-essential and that non-submission of information in the prescribed format can be a fit ground for rejection of the bids. Dr. Sathe would accordingly pray for dismissal of the petition.

---

5 (2016) 8 SCC 622

12) Rival contentions of the parties now fall for our consideration.

13) Petitioner has raised twin issues relating to his own disqualification due to failure to meet eligibility criteria and eligibility of Respondent No.3 to participate in the tender process.

14) So far as the first issue of Petitioner's disqualification is concerned, it is held ineligible and its technical bid is rejected on two grounds of (i) failure to meet the prescribed criteria of having experience of construction of residential and/or commercial projects with total area of atleast 6 lakh square feet built-up area and (ii) failure to submit the summary information in prescribed format in Exhibit-IV. Petitioner has also questioned eligibility of Respondent No.3 contending that Respondent No.3 produced false certificate of Architect in support of claim of having constructed residential/commercial project with 6 lakhs square feet built-up area.

15) Before going into the issue of eligibility of Respondent No.3, who is the successful bidder, it would be first necessary to take up the issue of validity of disqualification of the Petitioner. So far as the first ground of Petitioner's disqualification is concerned, the tendering authority has refused to accept the certificate of Architect of the Petitioner in respect of the project '*One Rajarhat*' with built-up area of 71,041.94 sq.mtrs equivalent to 7,64,695.44 sq.ft. situated at New Town, Kolkata (West Bengal). The experience indicated in the Architect's certificate dated 12 August 2024 is rejected by the tendering authority for the reason that construction indicated therein is not of '*residential and/or commercial project*' as the building constructed by the Petitioner is '*Residential plus Assembly building*'. The bidder was required to submit either the Occupancy Certificate issued by the Competent Authority or Completion

Certificate issued by the project Architect to demonstrate possession of experience of having constructed residential and/or commercial project with 6 lakhs sq.ft. built-up area. Petitioner accordingly relied upon certificate of its Architect, which reads thus :-

I, the undersigned, hereby confirm that Anik Industries Limited has successfully completed a high-rise Residential cum Assembly project 'One Rajarhat' having Basement + Ground Floor + 23 Floors covering approx. 71041.94 sqmt (764695.44 Sq. ft.) Built up area located at premises no. 30-1111 in Action Area - 1- B, New Town, Kolkata (WB)

16) Petitioner also relied on Occupancy Certificate issued by the New Town Kolkata Development Authority dated 28 February 2022, which indicated that the building was certified as *'fit for occupation as Assembly Building'*. The tendering authority in its Affidavit-in-Reply has quoted definition of the term *'Assembly Building'* in New Town Kolkata Planning Area (Building) Rules, 2014 and in New Town Kolkata Development Authority Act, 2007 and has contended that the Assembly Building is only for use as amusement, recreation, social, religious, patriotic, civil, travel, sports activities etc. For these reasons, the tendering authority has refused to consider the experience of the Petitioner in respect of the Project *'One Rajarhat'* at Kolkata as compliant with the tender conditions.

17) Under the tender conditions, the bidders had the option of either producing the Occupancy Certificate issued by the Competent Authority or the Completion Certificate issued by the project Architect. In this regard it would be relevant to quote the prescribed eligibility criteria prescribed in the Corrigendum issued by the tendering authority which is as under :-

b) The bidder should have minimum 5 years' experience of construction of residential and/or commercial projects with total of at least 6 Lakh square feet of built-up area as on date and as 2 documentary evidence, bidder should submit below:-

i) Occupancy Certificate (OC) issued by competent authority along with related documents issued by competent authority indicating built up area specifically for which OC is issued

/or

ii) Completion Certificate issued by project Architect registered with COA with built up area specifically mentioned in it or along with related documents issued by competent authority indicating built up area.

\*Bidder has to submit that summary in the format mentioned at Exhibit IV

18) Petitioner apparently produced both, the Occupancy Certificate issued by the planning authority as well as the certificate issued by the Architect. However both, the Occupancy Certificate as well as the Architect certificate do not indicate that the project constructed by the Petitioner is for use either for residential purpose or for commercial purpose or for mixed used as residential and commercial purpose. The tender conditions prescribed that the entire area of 6 lakhs square feet must be for either residential or commercial or for mixed use for residential + commercial. The Occupancy Certificate issued by the planning authority in respect of Petitioner's project is as under :-

On inspection of the premises by the person authorized by the undersigned, it is certified that the building is fit for occupation as Assembly Building.

19) Thus, the Occupancy Certificate does not clarify that the building constructed by the Petitioner is for residential or commercial use. If the Occupancy Certificate is silent about the exact use of the building, atleast the Architect ought to have certified that the building is constructed for use as residential and/or commercial purpose. The Architect however

certified that the '*Project is Residential-cum-Assembly Project*'. After taking into consideration definition of the term 'Assembly' under the relevant Act and Rules, the tendering authority has refused to consider the experience of the Petitioner as compliant with the tender condition of '*construction of 6 lakhs square feet built-up area of residential and/or commercial use*'. The interpretation made by the tendering authority would be final and binding and it is not for this Court to give a different interpretation either to the tender condition or to the certificate relied upon by the Petitioner. The law in this regard is well settled that the interpretation of the tendering authority about the tender conditions is final. Reference in this regard can be made to the judgments of the Apex Court in *Tata Cellular Versus. Union of India*<sup>6</sup> and *Silppi Constructions Contractors Versus. Union of India and another*<sup>7</sup>.

20) Mr. Thakker has relied upon certificate in respect of the Petitioner's project uploaded on the RERA website to buttress his contention that the project actually comprises of residential and commercial use. It is an admitted position that the said document was not produced before the tendering authority. Petitioner was given option of producing either the Occupancy Certificate issued by the Competent Authority or Completion Certificate issued by its own Architect. As observed above, if there was any lack of clarity about use of the building in Occupancy Certificate, Petitioner's Architect ought to have clarified that the building constructed by the Petitioner is for use as residential and commercial purposes. The Petitioner cannot now be permitted to rely upon additional documents after completion of the tender process. We therefore do not find any error on the part of the tendering authority in rejecting

---

6 (1994) 6 SCC 651

7 (2020) 16 SCC 489

Petitioner's bid on the ground of non-meeting of the eligibility criteria prescribed in the corrigendum.

21) Even if this Court was to conclude on the basis of additional documents now relied upon by the Petitioner that its project is for residential and commercial use, the Petitioner still has to cross the second and major hurdle of having not submitted the mandatory document in the form of Exhibit-IV. The initial tender condition did not contain any stipulation in Annexure-I for submission of summary in the format mentioned as Exhibit-IV. In para-6.1(vii)(e) of the tender notice, the bidders were required to submit 'technical eligibility documents' as per Annexure-I. In Annexure-I the bidders were required to submit either Occupancy Certificate issued by the Competent Authority and/or certificate issued by the project Architect. The original tender notice contained a format in Exhibit-IV which required bidders to furnish information for evaluation of technical eligibility criteria which was as under :-

Sr.No.	Name of the Project	Land Area Developed in sq.mtrs	Project Cost (Amt. In crore)	Date of Completion of Project
1				
2				
3				

*\*You may add more rows for additional information. Documentary proof is to be submitted vide technical bid in support of the aforesaid documents*

22) It is the case of the tendering authority that bidders questioned the requirement of production of Occupancy Certificate during the pre-bid meeting on the ground that issuance of Occupancy Certificate sometimes takes longer time and requested for consideration of Completion Certificate issued by the Project Architect indicating built-up area along with supporting documents issued by the Competent Authority



to demonstrate construction of requisite built-up area. Accordingly, a Corrigendum was issued replacing the original tender condition relating to technical eligibility and by substituting the same with new eligibility criteria. The Corrigendum reflected both, original criteria as well as modified criteria. The relevant part of the Corrigendum reads thus :-

Pre-bid Query	Tender Condition	Proposed Reply
Technical Eligibility Criteria must be either revoked or reduced to 1 lakh square feet of construction required as on date.	b) The bidder should have minimum 3 years* experience of construction of residential and/or commercial projects with total of at least 6 Lakh square feet of built-up area as on date and as a documentary evidence, bidder should submit below: -	b) The bidder should have 5 years experience of construction of residential and/or commercial projects with total of at least 6 Lakh square feet of built-up area as on date and as a documentary evidence bidder should submit below: -
	i) Occupancy Certificate issued by competent authority and bidder should submit details of project (Name, address & built-up area) certified by COA registered architect to correlate the OC details	i) Occupancy Certificate (OC) issued by competent authority along with related documents issued by competent authority indicating built up area specifically for which OC is issued
	<u>and/or</u>	<u>/or</u>
	ii) Completion Certificate issued by project Architect registered with COA (stamped & sealed alongwith copy of his COA certificate),	ii) Completion Certificate issued by project Architect registered with COA with built up area specifically mentioned in it or along with related documents issued by competent authority indicating built up area.  <b>*Bidder has to submit the summary in the format mentioned at Exhibit IV</b>

(emphasis added)

23) Thus, a new condition came to be added by way of Corrigendum as under :-

*Bidder has to submit the summary in the format mentioned at Exhibit IV*

24) The new format of Exhibit-IV appended to the corrigendum was as under :-

**EXHIBIT IV : INFORMATION FOR EVALUATION OF THE TECHNICAL ELIGIBILITY CRITERIA**

**1. Experience in Similar Projects**

Sr.No.	Name of the Project	Built up Area constructed (insq.Ft)	Project (Amt. Crores)	Cost In	Date of Completion of Project

*\*You may add more rows for additional information. This table indicates summary of projects submitted for consideration. However, bidder has to submit that documents mentioned in corrigendum hereinabove. Projects mentioned in this table without the supporting documents will not be considered for evaluation.*

25) Condition No.3 below Exhibit-IV stipulated as under :-

*3. The information must be submitted in the given formats. Any information not furnished strictly in accordance with the formats and requirements, irrelevant & non-certified documents shall not be considered for evaluation.*

26) Thus, the bidders were mandatorily required to submit the summary in the format prescribed in Exhibit-IV. Comparison of the old format in Exhibit-IV appended to the original tender document with the

new format introduced vide Corrigendum would indicate that the old format required the bidders to indicate the area of '*Land Area Developed in sq.mtr.*', whereas the new format mandated indication of '*Built up Area constructed (in sq.ft)*'. Since the tender condition required possession of experience of construction of residential/commercial project with total built-up area of 6 lakhs square feet, the tendering authority demanded information of built-up area in Exhibit-IV format rather than seeking the details of area of land developed. Petitioner has apparently submitted Exhibit-IV in old format by ignoring the new format introduced alongwith the Corrigendum. Mr. Thakker has submitted that it was an inadvertence on the part of the Petitioner in submitting the requisite information in old format of Exhibit-IV. However, this oral submission of Mr. Thakker is contrary to the pleadings in the petition, in which the Petitioner has claimed that it had submitted its bid in the prescribed format as per requirement stipulated in the tender conditions. Petitioner has not pleaded the case of inadvertence in the petition.

27) Having failed to submit Exhibit-IV as mandated in the Corrigendum, it is urged on behalf of the Petitioner that the format in Exhibit-IV is not a mandatory document and was merely an ancillary document. It is contended that Exhibit-IV required mere summary of the information which is already borne out by the Occupancy Certificate and Architect Certificate submitted by the Petitioner. In the tender document, Clause-2.14(c) provided that the Corrigendum issued to the tender document shall form part of tender documents. Thus, the Corrigendum issued by the tendering authority has also formed part of the tender document. There is a mandatory condition in the technical eligibility clause requiring submission of summary in the format specified in Exhibit-IV. In ***Central Coalfields Ltd.*** (supra), the Apex Court has highlighted the importance of submission of the documents/information in prescribed format. It is held in paras- 51 and 52 as under :-

51. Not only this, any decision taken by the employer in accepting or rejecting a particular bank guarantee in a format not prescribed by it could lead to (avoidable) litigation requiring the employer to justify the rejection or acceptance of each bank guarantee. This is hardly conducive to a smooth and hassle-free bidding process.

52. There is a wholesome principle that the Courts have been following for a very long time and which was articulated in *Nazir Ahmad v. King Emperor*, AIR 1936 PC 253 namely

“Where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

There is no valid reason to give up this salutary principle or not to apply it mutatis mutandis to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. ***It must follow from the application of the principle laid down in Nazir Ahmed that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other format.*** However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above.

(emphasis added)

28) In *West Bengal State Electricity Board* (supra), it is held that adherence to the instructions in the tender document cannot be given a go-bye by branding it as a pedantic approach. The Apex Court has held in para-24 as under :-

24. The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, respondent Nos.1 to 4 and respondent Nos.10 & 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil pre-qualification alone are invited to bid, adherence to the

instructions cannot be given a go-bye by branding it as a pedantic approach otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the Rule of law and our Constitutional values. The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a causality. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest.

29) The contention raised on behalf of the Petitioner that the format in Exhibit-IV is not a mandatory document does not appeal to us. The tender condition indicated mandatory condition of experience of construction of residential and/or commercial project of atleast 6 lakhs square feet built-up area. Exhibit-IV required the bidders to indicate the exact built-up area in respect of each of the projects relied upon by them. The format required the bidders to indicate the figures of constructed area of each project so as to present ready information to the evaluation committee to adjudge eligibility of the bidders. The Evaluation Committee was not supposed to go through the details of each and every document relied upon by the bidders and then scout for the relevant information related about built-up area of the projects. In any case, the condition of submission of summary in Exhibit-IV was included in the stipulation relating to '*technical criteria*'. It was introduced as a new condition by way of Corrigendum. The Petitioner therefore ought to have noticed the said condition and ought to have submitted the information in Exhibit-IV alongwith its bid. Petitioner's contention that Exhibit-IV is not a mandatory document or is an ancillary document cannot be accepted as the same contained information relating to built-up area of the Project for

the purpose of evaluating experience of the bidders. Reliance on the judgment in the case of *Poddar Steel Corporation* (supra) and *Shalby Limited* (supra) is therefore inapposite.

30) Faced with the situation that Exhibit-IV is a mandatory document stipulated in the eligibility criteria, Petitioner who initially pleaded in the petition that he had submitted the bid in the prescribed format, has improved upon his case in the rejoinder by contending as under :-

b. Respondent Nos.1 & 2 have modified the tender requirements through a corrigendum that was neither properly uploaded nor made accessible on the Maharashtra E-procurement Portal at the time of the Petitioner's bid submission.

31) The Petitioner has taken a belated defence in the rejoinder that the Corrigendum was not properly uploaded and was not accessible on the portal at the time of the bid submission. This improvised defence is proved fallacious as the Petitioner conveniently took note of the Corrigendum in respect of extension of last date to submit the bids from 5 November 2024 to 18 November 2024 and submitted its bid on the extended date of 18 November 2024. It is therefore impossible to believe that the Corrigendum was not properly uploaded on the E-portal or was not accessible to the bidders as falsely contended in the rejoinder. Having raised false plea in the rejoinder, Petitioner would be disentitled to invoke discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

32) We are therefore of the view that Petitioner did not submit mandatory document in prescribed format of Exhibit-IV and has rightly been disqualified by the tendering authority.



33) Coming to the aspect of Petitioner questioning the eligibility of Respondent No.3, once Petitioner itself is found technically disqualified, the issue of eligibility of other bidders becomes academic. Mr. Thakker has however relied upon judgment of the Apex Court in ***Banshidhar Construction Pvt. Limited*** (supra) in support of his contention that even though Petitioner is declared ineligible, it is entitled to question the eligibility of Respondent No.3. Reliance is placed on the findings recorded by the Apex Court in para-22 of the judgment which read thus :-

22. When the technical bid of the appellant was rejected by the respondents on 6-5-2024 on the ground that it did not comply with Clause 10 of NIT, namely Part I/Cover I Other Important Documents (OID) Point 02 Appendix II (power of attorney for signing of bid), there was no justification on the part of respondent authorities for accepting the technical bid of Respondent 8, which clearly was not in compliance with the same mandatory Clause 10 of NIT. The respondent BCCL has miserably failed to justify as to how the technical bid of Respondent 8 was accepted when it had not submitted the requisite important documents related to the qualification criteria as mentioned in Clause 10 of NIT.

34) In our view, the judgment of the Apex Court in ***Banshidhar Construction Pvt. Ltd.*** cannot be relied upon in support of absolute proposition that in every case where the Petitioner's disqualification is upheld, the Court must hold an enquiry into eligibility of the successful bidder. The judgment in ***Banshidhar Construction Pvt. Ltd.*** is rendered in the unique facts of that case. The Appellant therein had questioned award of contract to Respondent No.8 therein on the ground that Respondent No.8 did not possess the necessary qualification criteria prescribed in Clause-10 of the NIT. Respondent No.8 had failed to submit scanned copies of annual audit reports for three financial years, which was the mandatory requirement of the NIT. It was also found that the bid of the Appellant therein was rejected on the ground of non-compliance with

Clause-10 of the NIT on account of failure to submit other important documents like Power of Attorney. The Apex Court held that a discriminating treatment was given to the Appellant as the bid of Respondent No.8 was accepted though he had failed to comply with the submission of mandatory documents alongwith its bid. In our view, the judgment in *Banshidhar Construction Pvt. Ltd.* rendered in the peculiar facts of that case would not assist the case of the Petitioner.

35) However, even if the aspect of impermissibility for Petitioner to raise the issue of eligibility of Respondent No. 3 is to be momentarily ignored, we are unable to trace any element of arbitrariness, irrationality or perversity in the tendering authority adjudging Respondent No.3 as technically qualified. Petitioner has sought to create an element of suspicion on eligibility of Respondent No.3 contending that the Project-Kukreja Infinity East was incomplete but Respondent No.3 misrepresented to the tendering authority as if the project was complete. It is the contention of the Petitioner that the project-M/s. Kukreja Infinity East was constructed only upto ground and podium floor with built-up area of 12,000 sq.ft., whereas Respondent No.3 misrepresented before the tendering authority that the entire construction admeasuring 1,92,914.598 sq.ft. was complete and that the date of completion of project was 18 June 2023. Petitioner has also relied upon part Occupancy Certificate issued by Nagpur Municipal Corporation on 21 September 2023, as well as Certificate of the Architect uploaded on the RERA website to demonstrate non-completion of the project. However, the relevant eligibility condition required possession of experience of construction of residential and/or commercial projects with total of atleast 6 lakhs square feet built-up area 'as on date' of submission of bids. The tendering condition required production of either Occupancy Certificate or Completion Certificate issued by the Project Architect. The bid was submitted by Respondent No.3 in November 2024 and therefore Respondent No.3 was entitled to

rely upon the entire construction carried upto the date of submission of the bid. The Occupancy Certificate relied upon by the Petitioner was issued by the Planning Authority-Nagpur Municipal Corporation on 21 September 2023 by which time construction only upto ground and podium floors was complete. The Petitioner's Architect has however certified that construction admeasuring 1,92,914.598 sq.ft. was completed upto November 2024. Petitioner has relied on status of the project on RERA website uploaded in 2023 by ignoring the position that by November 2024, 100% work of slabs of super structure was apparently complete. We are therefore unable to accept the contention of the Petitioner that Respondent No.3 either did not possess the requisite eligibility criteria or misrepresented before the tendering authority in any manner.

36) Petitioner has contended that its bid was the highest and that therefore the tender ought to have been awarded to it. However, since Petitioner is found to be technically disqualified, no occasion arose for the tendering authority to examine its financial bid. It is well settled law that the comparison of financial bids can be made only if the bidders satisfy the tender eligibility criteria. In *W.B. State Electricity Board* (supra) the Apex Court has held as under :-

31. The submission that remains to be considered is that as the price bid of Respondents 1 to 4 is lesser by 40 crores and 80 crores than that of Respondents 11 and 10 respectively, public interest demands that the bid of Respondents 1 to 4 should be considered. The Project undertaken by the appellant is undoubtedly for the benefit of the public. The mode of execution of the work of the Project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of the work of the Project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and, on the other hand it affords the appellant a choice to select the best of the competitors on a competitive price without prejudice to the quality of the work. Above all, it eliminates favouritism and discrimination in awarding public works to contractors. The contract is, therefore, awarded normally to the lowest tenderer which is in public interest. **The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance with the rules and conditions cannot be ignored. It is obvious that the bid of Respondents 1 to 4 is**

the lowest of bids offered. As the bid documents of Respondents 1 to 4 stand without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it (sic they) cannot be directed to be considered along with the other bids on the sole ground of being the lowest.

*(emphasis added)*

Therefore the contention that the Plot must be allotted to the Petitioner on account of its bid being the highest, by ignoring its technical disqualification, deserves rejection.

37) Considering the overall conspectus of the case, we are of the view that Petitioner is unable to demonstrate any element of arbitrariness, irrationality or perversity in the actions of the tendering authority in implementing the impugned tender process. Therefore, there is no warrant for interference at the instance of the Petitioner who is found to have raised a false defence in rejoinder disentitling it from invoking discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The petition is otherwise devoid of merits. The petition accordingly fails. It is accordingly **dismissed**. Rule is discharged. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]