Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11468 OF 2024

Just Universal Pvt. Ltd.

A company incorporated under
the provisions of the Companies Act, 1956
and having its address at
KH No.101/1,101/2, 102, Kapsi Budruk,
Kamptee, Nagpur, Maharashtra – 44110. … **Petitioner**

V/s.

1. The State of Maharashtra,
through Food, Civil Supplies, and
Consumer Protection Department,
Government of Maharashtra, 2nd Floor,
Annex Building, Mantralaya, Madam Cama
Road, Nariman Point Mumbai, 400032.

2. M/s. Smart Services Pvt. Ltd.

Having address at 406, 4th Floor Western
Court, Opp. E-Square, Shivajinagar,
Pune – 411005.

3. M/s. Krystal Integrated Services Ltd.

Having address at Krystal House 15A17
Shivaji Fort CHS Duncans Causeway Road,
Mumbai Maharashtra, India – 400022.

… **Respondents**

WITH
WRIT PETITION NO.11469 OF 2024

Indo Allied Protein Foods Pvt. Ltd.
A company incorporated under the
provisions of the Companies Act, 1956
and having its address at
KH No.101/1,101/2,
102, Kapsi Budruk, Kamptee,
Nagpur, Maharashtra 441 110 … Petitioner

V/s.

1. The State of Maharashtra,
   through Food, Civil Supplies, and
   Consumer Protection Department,
   Government of Maharashtra, 2nd Floor,
   Annex Building, Mantralaya, Madam Cama
   Road, Nariman Point Mumbai, 400032.

2. M/s. Smart Services Pvt. Ltd.
   A private limited company incorporated
   under the provisions of the Companies Act
   Having address at 406, 4th Floor Western
   Court, Opp. E-Square, Shivajinagar,
   Pune – 411005.

3. M/s. Krystal Integrated Services Ltd.
   A Public Limited Company
   Having address at Krystal House 15A17
   Shivaji Fort CHS Duncans Causeway Road,
   Mumbai Maharashtra, India – 400022.

… Respondents

Mr. Zal Andhyarujina, Senior Advocate with Mr. Shrey Sancheti, Mr. Mahadji Phalke i/by Mr. Nikhil Adkine for the petitioner in WP/11468/2024.

Mr. Mayur Khandeparkar with Mr. Aniesh S. Jadhav, with Mr.Saurish Shetye with Mr. Rushikesh Kekane i/by Ms.Amisha Lolusare for the petitioner in WP/11469/2024.

Mr. V.R. Dhond, Senior Advocate (Special Counsel) with Mr.P.P. Kakade, Government Pleader and Mr. O.A. Chandurkar, Additional Government Pleader and Mrs.G.R. Raghuwanshi, AGP for respondent No.1 – State in WP/11468/2024.

Mr. Anil Sakhare, Senior Advocate (Special Counsel) with Mr. P.P. Kakade, Government Pleader and Mr. O.A. Chandurkar, Additional Government Pleader and Mrs. G.R. Raghuwanshi, AGP for respondent No.1 – State in WP/11469/2024.

Mr. Milind Sathe, Senior Advocate with Mr. Atit Soni, Mr.Swapnil Ambure, Ms. Nida Khan and Ms. Swati Pandey for respondent No.2 in WP/11468/2024.

Mr. Aabad Ponda, Senior Advocate with Mr. Atit Soni, Mr.Swapnil Ambure, Ms. Nida Khan and Ms. Swati Pandey for respondent No.2 in WP/11469/2024.

Mr. Ashutosh Kumbhakoni, Senior Advocate with Mr.Ashutosh Kulkarni, Mr. Sarthak S. Diwan i/by Mr. Avesh A. Ghadge for respondent No.3 in both WPs.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ & AMIT BORKAR, J.

RESERVED ON : AUGUST 29, 2024

PRONOUNCED ON : SEPTEMBER 2, 2024

JUDGMENT: (Per Amit Borkar, J.)

1. These two petitions raise similar questions of fact and law, and are therefore being disposed of by this common judgment.

2. In both petitions, the challenge is directed against the communication/technical evaluation report dated 13th August 2024, pursuant to which the petitioners were disqualified and deemed technically ineligible in relation to the Request for Proposal dated 18th July 2024, bearing RFP No. ASHiVi_2024/CR-17/NAPU22, for the supply of food kits ("Anandacha Shidha") for the Gauri-Ganpati Festival during the financial year 2024-2025.

3. The facts in Writ Petition No.11468 of 2024 are as follows: Respondent No. 1 issued a Request for Proposal dated 18th July 2024 for supply of food kits ("Anandacha Shidha")

for the Gauri-Ganpati Festival during the financial year 2024-2025 under the terms and conditions set forth therein. The tender document required supply of packages containing sugar, chana dal, rawa, and soybean oil, along with a polypropylene bag, to various Taluka godowns in the Districts of Maharashtra State. The Earnest Money Deposit (EMD) was set at Rs. 2 crore. A pre-bid meeting was held on 22nd July 2024. The tender document, issued on 18th July 2024, initially set the deadline for bid submission as 25th July 2024, which was subsequently extended to 26th July 2024. The technical bids were scheduled to be opened on 26th July 2024.

4. The petitioner participated in the tender process, submitting relevant documents, including a completion certificate dated 24th July 2024 issued by Respondent No. 1; the first completion certificate dated 24th July 2024 issued by the Commissionerate, Integrated Child Development Service Scheme, Navi Mumbai, Maharashtra State; experience certificate No. 739 of 2024 dated 24th July 2024 issued by the Maharashtra Building and Other Construction Workers' Welfare Board, Mumbai; and the second experience certificate No. 743 of 2024 dated 24th July 2024 issued by the Maharashtra Building and Other Construction Workers' Welfare Board, Mumbai. Additionally, it submitted an agreement dated 5th July 2024 executed between the Maharashtra Building and Other Construction Workers' Welfare Board and the petitioner.

5. The technical bids were initially scheduled to be opened by Technical Evaluation Committee on 29th July 2024.

However, in light of the documents submitted by other bidders, the petitioner addressed two letters dated 29th July 2024, raising objections regarding the ineligibility of Respondent Nos. 2 and 3. By letter dated 7th August 2024, Technical Evaluation Committee requested the petitioner to respond to certain queries related to the experience certificates submitted, stating that the first experience certificate did not specify the petitioner's requisite experience in "loading, unloading, or handling of food grains, food items, etc." under a completed work order. Technical Evaluation Committee also sought clarification regarding the agreement submitted by the petitioner, noting that the work indicated therein pertained to supplying labor and not providing labor, and that the experience certificate did not specify a completed work order of Rs. 25 crore in value.

6. In response to the letter dated 7th August 2024, the petitioner addressed a letter dated 8th August 2024 to Technical Evaluation Committee, asserting that the petitioner had extensive experience in food grain and manpower supply, including loading, unloading, and handling of food grains for various Government departments in Maharashtra. The experience certificate No.743 of 2024 certifies the petitioner's experience of supplying 14,86,19,622 meals, valued at over Rs.931 crore, with Rs.161 crore attributable to loading, unloading, or handling of food grains, and Rs.220 crore to manpower supply, thereby fulfilling the eligibility criteria of Rs.25 crore for providing labor.

7. By letter dated 8th August 2024, the petitioner raised specific objections, highlighting the ineligibility of Respondent Nos.2 and 3. On 9th August 2024, the petitioner raised further objections regarding the bid documents submitted by Respondent No.2, contending that the Memorandum of Association specified the company's primary objective as maintaining supply and outsourcing manpower, with no mention of food grain supply even as an incidental activity. On 13th August 2024, Technical Evaluation Committee disqualified the petitioner from the tender process on the grounds that the petitioner's bid failed to meet the experience condition No. PQ5 of the tender document. This communication dated 13th August 2024 is the primary subject matter of the present petition. By the impugned communication/technical evaluation dated 13th August 2024, Technical Evaluation Committee disqualified the Petitioner from the tender process on the following grounds:

3.	*Just Universal Pvt. Ltd.*	***Pre-qualification condition PQ5 is not qualified.*** ● *As per the work order dated 15.03.2024 of Maharashtra Building and other construction worker Welfare Board, Mumbai, the bidder has een assigned the task of appointing manpower like Manager, Data Entry Operator and Helper in each Taluka Worker Suvidha Kendras. The said work is to be completed in the next 6 months from the date of work order. However, the work order has not been completed upto last date of submission of tender.* ● *The bidder has submitted experience*

certificate of Maharashtra Building and Other Construction Workers Welfare Board, Mumbai regarding implementation of mid-day meal scheme and agreement dated 05.07.2021. According to clause 2 Brief Scope of Work in the said agreement, selected agency shall be responsible for preparation supply and distribution of micronutrient fortified freshly cooked mid-day meal to the registered workers at various constructions sites.

- *The bidder did not submitted work order / agreement/ LoI specifying PQ5 condition of the tender that is providing 300 workers at 70 places in Government /Semi-Government establishments as per pre-qualification criteria in PQ5-Other Experience.*

8. The facts in Writ Petition No.11469 of 2024 are largely similar to those in Writ Petition No.11468 of 2024. The Petitioner participated in the tender process and submitted six documents to satisfy eligibility conditions PQ4 and PQ5 of the tender document. Technical Evaluation Committee, by letter dated 7th August 2024, called upon the Petitioner to provide an explanation regarding the certificate dated 25th July 2024 and the agreement dated 22nd June 2024, alleging that they were false. In response, the Petitioner, through a communication dated 8th August 2024, demonstrated its experience in loading, unloading, or handling food grains, food items, etc., involving at least 300 laborers across 70 multiple locations within Government and Semi-Government establishments in Maharashtra State. According to Technical

Evaluation Committee, Petitioner failed to satisfy the requirements specified under condition No.PQ5 of the tender document. The communication dated 13th August 2024 is the subject matter of the present petition.

9. The petitioner filed the present petition on 14th August 2024. However, on the same date, Respondent No.1 proceeded to issue a work order in favor of Respondent No.2 in furtherance of the said tender. Consequently, both petitioners amended their petitions to challenge the work order dated 14th August 2024, as well as any subsequent orders, agreements, or communications issued by Technical Evaluation Committee in favor of Respondent No.2 in furtherance of the said tender.

10. Respondent No.1 filed an affidavit in reply, contending that the petitioner does not satisfy the requirements of Condition No.PQ5, specifically with respect to the experience certificates at Exhibits C, D, E, and F appended to the petition. It is asserted that the contract under which the petitioner claims experience was not one for providing manpower, but rather for the "preparation, supply, and distribution of mid-day meals" at external locations, as indicated in the chart mentioned in paragraph 18. Respondent No.1 provided detailed reasons as to how the petitioner failed to meet the eligibility criteria of Condition No.PQ5.

11. Respondent No.2 also filed a reply, asserting that the petitioner was rightly disqualified by Respondent No.1. Respondent No.2 further contended that the documents

furnished by them, including the certificate dated 7th August 2024 submitted in response to a clarification sought by Respondent No.1, demonstrates that Respondent No.2 meets the eligibility requirements of Condition No.PQ5. It was also submitted that the impugned work order from 2019 was extended until 31st May 2022, and the work was completed on that date, within three years from the last date of submission of bids, i.e., 26th July 2024. Additionally, the work order dated 1st January 2019 indicates that Respondent No.2 was providing manpower at the establishments/godowns of the Maharashtra Warehouse Corporation. It was further contended that the terms and conditions of the work order indicate that the entire exercise of distributing food kits must be completed in a timely manner for the upcoming Gauri-Ganpati festival, which begins on 7th September 2024. Therefore, given that Respondent No.1 has already undertaken substantial work, it is not in the public interest to interfere with the present writ petition.

12. Mr. Andhyarujina, learned Senior Advocate appearing for the petitioner submitted that the petitioner's technical bid has been declared non-responsive based on the grounds set forth in the impugned communication and supplemented in the affidavit-in-reply submitted by Respondent No.1. However, none of these grounds are sufficient to support decision of Tender Evaluation Committee to declare Petitioners' bid non-responsive; the experience certificates annexed as Exhibits C, D, and E clearly demonstrate compliance with the requirements of Condition No. PQ5. Furthermore, the documents submitted by Respondent No.2 along with the bid,

including the certificate dated 7th August 2024, indicate that Respondent No.2 has not supplied labourers, which is a crucial requirement under Condition No.PQ5; Awarding the contract to Respondent No.2 would result in a loss exceeding Rs. 44 Crore for Respondent No.1, considering the bid price submitted by the petitioner is the lowest; The work order submitted by Respondent No.2 alongside the bid indicates that the period mentioned therein does not cover three years preceding the tender process, and the work was limited to only 58 locations. The manpower supplied by Respondent No.2 did not consist of labourers, and even in the certificate dated 7th August 2024, the number of locations is not specified; Relying on the judgment in ***63 Moons Technologies Limited v. Union of India***, (2019) SCC 401, he argued that the decision to declare the petitioner ineligible must be justified based on the reasons provided by the Technical Evaluation Committee, and the new grounds supplied via the affidavit-in-reply cannot be used to justify the order declaring the petitioner ineligible. Lastly, referring to Condition No.6.7.2, he submitted that, given the nature of the work and the short time frame for its completion, equity could be served by allowing both the petitioner and Respondent No. 2 each to supply 50% of the goods. In support of this contention, he cited the judgments in ***SILPPI Constructions Contractors v. Union of India and Anr.***, (2020) 16 SCC 489; ***Assam Electronics Development Corporation Ltd. & Anr. v. Educomp Solutions Ltd. & Ors.***, (2006) 13 SCC 563; ***Aditya Enterprises v. City Industrial and Development Corporation of Maharashtra Ltd.***, (2023) SCC OnLine Bom 876; and ***M/s. Star***

Enterprises and Others v. City and Industrial Development Corporation of Maharashtra Ltd., (1990) 3 SCC 280;

13. Conversely, Mr. Dhond, learned Senior Advocate appearing for Respondent No.1, opposed the petition, arguing that the petitioner was disqualified from the tender process and therefore has no locus to challenge the decision of Respondent No.1 in awarding the contract to Respondent No.2. The petitioner was found ineligible on three grounds as stated in the impugned communication, and this decision is further supplemented by the reasons detailed in paragraph 18 of the affidavit-in-reply. He submitted that this Court should not act as an appellate body over the decision taken by Respondent No.1, as judicial review under Article 226 of the Constitution of India does not entail a review of the decision itself, but only the decision-making process.

14. Drawing Court’s attention to Exhibits C to E, at pages 136 to 139 of the petition, he argued that the contract under which the petitioner claims experience was not one for providing manpower, but rather for the preparation, supply, and distribution of cooked mid-day meals to registered workers at construction sites, therefore, experience in engaging manpower for cooking and supplying meals cannot be equated with providing manpower. Moreover, the requirement under Condition No.PQ5 is to provide manpower at external locations, i.e., Government and Semi-Government establishments. The documents submitted by the petitioner indicate that the manpower/employees were primarily engaged at the petitioner's own locations where meal

preparation took place, which does not meet the criterion of supply to Government and Semi-Government establishments. Additionally, the documents fail to establish the deployment of 300 workers or work exceeding the value of Rs.25 Crore. The documents also do not indicate that the work under the said work order/contract was completed. Relying on the judgment of the Division Bench of this Court in ***Adani Ports and Special Economic Zone Limited v. Board of Trustees of Jawaharlal Nehru Port Authority and Others***, (2022) SCC OnLine Bombay 1326, it is contended that after considering the judgments in ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi & Ors.***, (1978) 1 SCC 405, and ***63 Moons Technologies Limited v. Union of India and Others***, (2019) 18 SCC 401, the Division Bench held that the decisions do not establish a legal principle that restricts the writ Court's power from looking beyond the order under challenge to ascertain from external evidence whether the order can be upheld.

15. On the point of the scope of judicial review and public interest, relying on the judgments in ***Raunaq International Ltd. v. I.V.R. Construction Ltd. & Ors.***, (1999) 1 SCC 492; ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & Anr.***, (2016) 16 SCC 818; ***SILPPI Constructions Contractors v. Union of India and Anr.***, (2020) 16 SCC 489; and ***Assam Electronics Development Corporation Ltd. and Anr. v. Educomp Solutions Ltd. & Ors.***, (2006) 13 SCC 563, it is submitted that the scope of judicial review in the tender process is limited to determining whether the process adopted and the decision made by the authority were mala fide, intended to favor someone, or so arbitrary and irrational that

no reasonable authority acting reasonably in accordance with the relevant law could have reached such a decision, and whether public interest is affected. In his submission, if the answers are negative, there should be no interference under Article 226 of the Constitution of India.

16. Mr. Sathe, learned Senior Advocate representing Respondent No.2, relying on the judgment in ***Agmatel India Private Limited v. Resoursys Telecom And Ors.***, (2022) 5 SCC 362, submitted that the author of the tender document is the best person to understand and appreciate its requirements and further that if the interpretation of the tender is manifestly in consonance with its terms, the Court should exercise restraint, even if the interpretation given by the person inviting offers is not entirely acceptable to the constitutional Court. Moreover, relying on the judgment in ***N.G. Projects Limited v. Vinod Kumar Jain & Ors.***, (2022) 6 SCC 127, he further submitted that judicial review in cases involving the evaluation of tenders or contracts, particularly where public interest is at stake, should be minimal as such interference could result in a loss to public interest. He also submitted that the tender process is of a short-term nature, with supplies required to be completed well before 7th September 2024, and any interference by this Court would frustrate the purpose of the tender.

17. Mr. Khandeparkar, learned Advocate representing the petitioner in the connected petition, submitted that the completion certificate dated 24th July 2024 issued by Respondent No.1 itself satisfies the parameters of Condition

No.PQ5. He also submitted that the petitioner's bid price is nearly Rs.44 Crore lower than that of Respondent No.2, and it is therefore in the public interest to declare the petitioner technically eligible to avoid a substantial loss to the public exchequer. He further submitted that Respondent No.2 has failed to meet the eligibility criteria, and it is therefore necessary, in the public interest, to interfere with the decision to award the work order in favor of Respondent No.2.

18. Conversely, Mr. Ponda, learned Senior Advocate appearing on behalf of Respondent No.2 in the connected petition (WP/11469/2024), argued that the experience required to fulfill Condition No.PQ5 pertains to providing of manpower at external locations, a condition the petitioner has not met. Moreover, in the earlier petition filed by the petitioner challenging Condition No.PQ5, the petitioner acknowledged that if the validity of the condition was upheld, he would be disqualified. The petitioner has failed to meet the essential criteria on multiple counts, including the failure to comply with the work order requirements, by employing own employees and was therefore rightly held to be ineligible. In support of his contentions, Respondent No.2 relied on the judgments in ***Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Ors.***, (2023) SCC OnLine SC 671; ***B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. & Ors.***, (2006) 11 SCC 548; ***M.P. Power Management Company Limited v. Sky Power Southeast Solar India Private Limited & Ors.***, (2023) 2 SCC 703; and ***Subodh Kumar Singh Rathour v. Chief Executive Officer and Ors.***, (2024) SCC OnLine SC 1682.

19. While evaluating merits of the submissions, it would be appropriate, at the outset to formulate the nature and extent of judicial review where a challenge is made to the decision of Technical Evaluation Committee to disqualify petitioners, and the principle which must govern such a case and the extent of judicial review in contractual matters, particularly concerning the interpretation of tender conditions, which has been a subject of significant scrutiny by the Supreme Court. The principles governing judicial intervention in tender matters have been consistently articulated in several landmark decisions.

20. In ***Afcons Infrastructure Ltd.*** (Supra), the Supreme Court emphasized that the entity that authors the tender document is the best positioned to comprehend and interpret its requirements. The Court asserted that the interpretation provided by the tendering authority should be deferred to unless it is tainted with mala fides or is manifestly perverse. This principle underscores the understanding that those who draft the tender documents have the technical expertise and knowledge necessary to interpret their provisions effectively.

21. The Supreme Court in ***Jagdish Mandal*** (Supra) highlighted that judicial review in contractual matters should be invoked primarily to check whether the decision-making process is lawful and not to assess the soundness of the decision itself. The Court emphasized that judicial interference is warranted only when the decision is arbitrary, irrational, or mala fide, or when it adversely affects public interest. This case also introduced the principle that courts should refrain

from interfering in commercial decisions unless the authority's process or decision is so unreasonable that no rational authority could have made such a decision.

22. In ***Montecarlo Ltd.*** (Supra), the Supreme Court elaborated on the need for judicial restraint in matters involving technical evaluations of tenders. The Court recognized that technical bids are often scrutinized by experts and sometimes third-party assessors, who have a better understanding of the project requirements. Judicial review is appropriate only when the process adopted by the tendering authority is arbitrary or mala fide, not merely because the court might have a different view.

23. In ***Silppi Constructions Contractors*** (Supra), the Court reiterated the principle that judicial intervention in contractual matters involving state instrumentalities should be exercised with caution and restraint. The Court emphasized that intervention is justified only in cases of overwhelming public interest and when the decision of the tendering authority is found to be arbitrary or unreasonable. The Court further noted that the authority that issues the tender is the best judge of its requirements, and therefore, minimal interference is warranted.

24. *In the case of* ***Agmatel India (P) Ltd. v. Resoursys Telecom,*** (2022) 5 SCC 362, it is held as follows:

> *"**26.** The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is*

manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."

25. In view of ***Raunaq International Ltd. v. IVR Construction Ltd.***, (1999) 1 SCC 492 the legal principles governing the intervention of courts in disputes between rival tenderers are well-established. It is incumbent upon the Court to ascertain whether there is a significant element of public interest in the litigation before entertaining such a petition. Judicial intervention in tender disputes may result in considerable delays to the proposed project, potentially escalating costs far beyond any financial savings achieved by adjudicating the dispute in favor of one party over the other. Consequently, unless the Court is convinced that there is a substantial public interest at stake or that the transaction in question is tainted with mala fides, it should refrain from exercising its jurisdiction under Article 226 in such matters. The Court must be satisfied that the public interest in delaying the project outweighs the public interest in its timely completion, taking into account the associated costs and whether the public would ultimately benefit from such expenditure.

26. In case of **Subodh Kumar Singh Rathour** (Supra) dispute concerned with interpretation of terms in a tender document. One of the bidders challenged the tender process, alleging

that the terms were interpreted arbitrarily, thus affecting the fairness and transparency of the bidding process. The issue involved was whether the discretion exercised by the tendering authority in interpreting the terms of the tender document was legally sound and whether such discretion was exercised in a manner that was arbitrary or discriminatory. The Supreme Court held that the author of a tender document, usually a government authority, has considerable discretion in setting and interpreting the terms of the tender. However, this discretion is not absolute and must be exercised within the bounds of fairness, reasonableness, and non-arbitrariness. The Court reiterated that the terms of a tender are to be interpreted by the authority issuing the tender. The Court held that this discretion includes deciding the eligibility of bidders and the conditions under which a tender can be accepted or rejected. The Supreme Court observed that courts should not interfere with the interpretation of tender terms by the tendering authority unless there is evidence of mala fides, arbitrariness, or a clear violation of statutory provisions. The Supreme Court emphasized the importance of upholding the integrity and autonomy of the tendering process, ensuring that courts do not substitute their own interpretation for that of the tendering authority unless the interpretation is manifestly unreasonable. While the authority has the discretion to interpret the terms, this discretion must be exercised reasonably and in good faith. In this case, the Supreme Court examined whether the interpretation given by the tendering authority was consistent with the overall objective of the tender and whether it was applied uniformly

to all bidders. The judgment reiterated the position that the author of a tender document has the primary role in interpreting its terms.

27. *In* ***Michigan Rubber (India) Ltd. v. State of Karnataka,*** (2012) 8 SCC 216 it is held as follows*:*

> *"**24**. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*
>
> *(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? And*
>
> *(ii) Whether the public interest is affected*
>
> *If the answers to the above questions are in the negative, then there should be no interference under Article 226."*

28. The Supreme Court, has consistently emphasized the principle of judicial restraint in matters involving the interpretation of tender documents. The courts are required to defer to the interpretation provided by the tendering authority, especially when the interpretation aligns with the language and purpose of the tender document. While the court must respect the autonomy of the tendering authority, it also has a role in ensuring that public interest is not compromised. The Supreme Court has emphasized that judicial review is necessary to prevent procedural unfairness

and arbitrary actions by public authorities. There is need to maintain delicate balance between allowing the tendering authority the necessary discretion to manage procurement processes effectively and ensuring that this discretion is not exercised in an arbitrary or discriminatory manner. While the interpretation of tender terms is within the domain of the author, such interpretation must align with the principles of fairness, reasonableness, and transparency, which are fundamental to the rule of law in public procurement. The overarching theme in these judgments is the principle that technical and commercial evaluations or interpretation of tender condition should be left to the experts and judicial intervention is warranted only when the decision-making process is vitiated by arbitrariness, irrationality, mala fides, or when it adversely affects public interest.

29. The Supreme Court has, thus, held in various judgments that the High Court should not exercise its discretionary power under Article 226 of the Constitution unless public interest is affected. The Court must exercise its discretionary powers under Article 226 with great caution and should do so only in furtherance of public interest, not merely on the basis of a legal technicality. While a public authority's decisions in contractual matters are not beyond scrutiny, and must adhere to recognized norms, if a decision is made in good faith, even if not in strict compliance with judicially recognized norms, it may still be upheld on the principle that courts should allow the executive a certain degree of "play in the joints" when assessing the constitutional validity of its decisions.

30. In the present case, the primary issues for consideration before this Court are: Whether the rejection of the petitioner's bid was arbitrary and contrary to the terms of the tender; Whether the interpretation of the tender conditions by the respondent authorities was reasonable and in accordance with the law; and Whether judicial interference is warranted in the present case, given the scope of judicial review in matters related to tenders and contracts?

31. The relevant clause PQ5 of RFP/Tender document is extracted hereunder:

#	***Basic Requirement***	***Eligibility Criteria***	***Documents to be Submitted as per RFP***
PQ5	*Other Experience*	*The experience of loading, unloading, [or] handling of food grains, food items etc. to be provided by bidder. Hence, bidder should have experience of providing at least 200 labourers in 70 multiple locations in Government and Semi-Government establishment within Maharashtra in single work order completed during last 3 years (upto the last date fo submission of Tender). The value of such work shall not be less than Rs.25 Crores.*	*Bidder shall submit the following documents:* *1. Relevant Work Orders or Contract Agreements or Award of Contract or LoI.* *2. Experience or Completion certificates should be submitted clearly stating the scope of work performed.*

32. According to the petitioner, the experience certificates annexed to the petition at Exhibit C, D and E unambiguously fulfill all parameters of condition PQ5. However, according to the respondents, the petitioners in both the petitions failed to meet ingredients of condition No.PQ5. For the purpose of adjudicating the issue of eligibility of petitioners to fulfill requirement under condition PQ5, it is necessary to dissect

condition PQ5 as under:

> "*"loading", "unloading [OR] "handling" Food grains/food items, etc.*
>
> *AND*
>
> *(a) should have been Providing 300 labourers in number; [AND]*
>
> *(b) in 80 multiple locatioins; [AND]*
>
> *(c) under a Single Work Order, which should be completed during last 3 years (upto the last date of submission of Tender) [AND]*
>
> *(d) such experience shall be in Government or Semi Government Establishment [AND]*
>
> *(e) the value of such completed work should not be less than Rs.25 crores.*"

33. The dispute primarily hinges on the interpretation of the term 'providing labourers' as eligibility condition set out in the tender document. The term 'providing manpower/labourers' may contemplate a situation where the agency provides workers along with the execution of specific tasks or projects as per the scope of work defined in the tender. The workers remain under the control of the agency, and the agency is responsible for the work outcome. The service provided is generally considered a 'works contract' or 'contract for services,' where the agency not only provides manpower but also assumes responsibility for the completion of tasks or projects. In other words if an agency provides manpower along with the responsibility to perform a particular job or service, it may fall under the category of a contract for services. Providing Manpower/Labourers implies a more

integrated role where the contractor not only supplies personnel but also manages and oversees their activities as part of a broader service delivery. Providing manpower/labourers can imply a range of responsibilities, including recruitment, management, and even ensuring that the manpower meets certain standards or qualifications required for the specific tasks outlined in the tender. It is imperative to observe that 'providing manpower/labourers' may carry different connotations depending on the context and objectives of the tender. In the wake of these aspects, the interpretation of 'providing manpower/labourers' may vary significantly based on the context of the tender. The tendering authority, familiar with the project's requirements, is in the best position to determine whether the term encompasses merely the supply of personnel or extends to a broader set of obligations. In conclusion, the term 'providing labourers' within tender conditions must be interpreted in its full context, considering the technical and commercial aspects of the project.

34. For the purpose of interpreting eligibility criteria PQ5 and considering involvement of public interest, it is necessary to understand the nature and scope of work which is the subject matter of tender process. Respondent No.1 took a decision to distribute food kits-Anandacha Shidha consisting of four items *vide* Government Resolution dated 12th July 2024. It was decided to distribute the said food kits to 1,70,82,086 beneficiaries having ration card of NFSA (National Food Security Act) and APL (Above Poverty Line) farmers scheme. It is stated that during the course of hearing that the number

of eligible beneficiaries on verification have been reduced to around Rs.1.56 Crore. Gauri-Ganpati festival is to be celebrated on 7th September 2024 and this supply is intended to be distributed well in advance within a short time. Respondent No.1 oversees nearly 900 Taluka godowns spread over 357 Talukas in 42 food districts in Maharashtra and the MTRA (Mumbai Thane rationing area) region. The quantity of 68,328 Metric Ton food grains commodities comprising "Anandacha Shidha" has to first reach these Taluka godowns and from there, there will be further dispatch of food grains to 52500 fair price shops. Thereafter, the food grains packets will be supplied to the eligible beneficiaries. According to respondent No.1, ordinarily to execute the work of subject matter of tender, a supplier procures items in bulk which are unloaded at their packaging unit(s). At these unit(s), the items sourced in bulk are sorted, cleaned, aggregated and packed as per the directions of the Government of Maharashtra in packets of 1 Kg. The packed food kits/goods are thereafter loaded on to trucks and sent to the Taluka godowns. There are around 900 Taluka godowns to which deliveries are to be made. Considering such scope of work and past experience of similar contract, supplier may need to carry on the packaging at multiple locations. Therefore, it was thought necessary that in order to assess the ability of the supplier and their past experience to provide 300 labourers at 70 locations need to be considered and was therefore made a criteria in RFP/Tender document. In the opinion of the Court, this condition is a reasonable condition, imposed to assess the minimum past experience of bidder which in the opinion of the

tendering authority will enable him to make such supplies. The validity of PQ5 has already been upheld by this Court.

35. Having considered the eligibility criteria PQ5 in the context of purpose and scope of work of tender condition and having scrutinized Exhibits C, D and E, what we find is that the respondents are justified in contending that the experience of engaging manpower for cooking and supplying meal is not the same as 'providing labourers' as per tender condition PQ5.

36. Moreover, the manpower employed by the petitioner was primarily at its location where cooking of meal took place and was not external and, therefore, these locations were not Government and Semi-Government establishments. The work contract relied on by the petitioner does not specifically say manpower engaged or employed.

37. In so far as Exhibit D is concerned, it appears that the contract referred in the said certificate was for setting up shelters for workers at different locations. However, it appears that the response dated 8th August 2024 by the petitioner to the queries raised by the Respondent No.1 regarding compliance of the said work order, does not fulfil the completion of work as required under PQ5, it does not indicate that the contract of setting up Taluka worker facility centre was for 'providing manpower/labourers' and also does not indicate that the work order was completed. The work order dated 15th March 2024 relied on by the petitioner in particular condition No.1,6,9 shows that the work order was in

respect of setting up infrastructure at these centres and, therefore, cannot be termed as contract for 'providing manpower/labourers' and the duration is of six months from 15th March 2024 indicates that it is ongoing project.

38. Furthermore, the certificate at Exhibit C annexed by the petitioner indicates that the work order was for providing food (pre-mixed Tur dal Khichdi) and not for 'providing manpower/labourers'. It also does not appear that the work has been completed.

39. In so far as the petitioner in Writ Petition No.11469 of 2024 is concerned, the petitioner relied on certificates dated 24th July 2024 and 25th July 2024 in support of his case of fulfilment of criteria prescribed by condition PQ5. On perusal of certificate dated 24th July 2024, it appears that neither the certificate nor the agreement dated 22nd June 2021 relied by the petitioner ex facie indicate fulfillment of condition PQ5. On perusal of the certificates and agreement, it appears that the work performed by the petitioner is similar to work performed by the petitioner in connected petition and, therefore, the reasons assigned for arriving at conclusion about non fulfillment of PQ5 will also apply to this petitioner also.

40. The tendering authority, in the present case, having the requisite expertise, interpreted this term PQ5 within the context of the specific requirements of the project. The tendering authority, in its expertise, interpreted the term 'providing manpower/labourers' which was necessary to assess capability of tenderer for the successful execution of

the project. This interpretation is apparently aligned with the overall purpose of the tender and was deemed reasonable by the authority. This Court, should not take a different view, which we find will be an unwarranted interference in the domain of the tendering authority. The courts, guided by principles of deference to the domain of tendering authority and restraint, should respect the tendering authority's interpretation, intervening only in cases where there is clear evidence of irrationality, arbitrariness, or mala fides. The tendering authority is the best judge of its requirements and is entitled to interpret the tender documents in a manner that it deems fit, provided such interpretation is not arbitrary or irrational. The role of the court in judicial review is limited to ensuring that the decision-making process is lawful and that it does not result in any manifest injustice. This court, need not by substituting its own interpretation, effectively engage in an evaluation that falls outside the permissible scope of judicial review.

41. In the present case, the process adopted or the decision made to declare petitioners bid unresponsive cannot be deemed so arbitrary and irrational that this Court could conclude that no reasonable authority, acting in accordance with relevant law, could have arrived at such a decision. In absence of any perversity, illegality, procedural impropriety or involvement of public interest, we are of the opinion that it would not be proper for this Court to sit in appeal substituting its own interpretation.

42. Once the petitioners have failed to demonstrate that

they do meet the eligibility criteria, in view of the judgment in the case of ***Raunaq International Ltd.*** (Supra) and ***Reliance Infrastructure Limited, Mumbai & Ors. Vs. Maharashtra State Road Development Corporation Ltd., Mumbai & Ors.,*** reported in 2011(1) Mh.L.J. 445, no relief at the instance of such ineligible petitioner can be granted. It is, therefore, not open for the petitioner, who does not meet the eligibility criteria, to complain of the award of contract on the ground that its financial bid offers better terms. The question of comparing financial bid arises between bidders who are eligible.

43. Learned Senior Advocate representing the petitioner relying on the judgment in the case of ***63 Moons Technologies Limited*** (Supra) submitted that respondent No.1 is not entitled to support its decision holding the petitioner ineligible on the grounds furnished in affidavit-in-reply. However, the Co-ordinate Bench of this Court in the case of ***Adani Ports and Special Economic Zone Limited*** (Supra) considered the judgments in the case of ***Mohinder Singh Gill*** (Supra) and ***63 Moons Technologies Limited*** (Supra) and observed in paragraph 57 as under:

> *"57. ..... We are inclined to the view that the writ court has such plenary power/authority and the same is not curbed by the decisions under consideration. Gordhandas Bhanji (supra), Mohinder Singh Gill (supra) and 63 Moonds Technologies Ltd. (supra) cannot be read as precedents precluding a writ court from sustaining an administrative order of disqualification dehors the reasons/grounds stated therein, but based on any reason/ground appearing in the records or from the pleaded case of the party challenging such order."*

44. Therefore, in our view, this Court can consider the material annexed to the petitions or the records pertaining to the order under challenge and can conclude after putting the party at receiving end on notice, that validity of the order under challenge can be upheld based on such third reason/ground.

45. One more reason, and this reason manifestly bears an element of public interest, that weighs with this court not to interfere in the decision of Tender Evaluation Committee is the nature of work which is the subject matter of tender process. It is evident that the work of distributing food kits to around 1.56 Crore eligible beneficiaries need to be completed well before the Gauri-Ganpati festival which is to be celebrated on 7th September 2024. Therefore, at this stage interference in the tender process and its cancellation will not be in the public interest as beneficiaries will be deprived of benefit of scheme floated by respondent No.1. Thus, in addition to ineligibility of petitioners, it is the public interest which dissuades this Court not to interfere with the tender process for supply of food kits. Moreover, this Court by order dated 5th August 2024 passed in Writ Petition No.10371 of 2024 at the instance of petitioner in connected petition refused to interfere with the validity of condition PQ5 by assigning *inter alia* following reasons which are extracted below:

> *"36. Festival is to commence from 7th September 2024 that is to say,it is hardly a month left when the distribution of food kits are to start and accordingly; having regard to such a*

short time left for distribution of food kits in terms of the subject tender, unless we find that the impugned tender condition No.PQ5 is manifestly arbitrary or irrational, in our considered opinion, interference in the instant matter at this juncture would not be warranted as it will not be in public interest. ….."

46. For all these reasons, we are of the view that it would neither be appropriate nor proper for this Court to interfere with the impugned decision in the exercise of the writ jurisdiction under Article 226 of the Constitution, particularly having regard to the well settled parameters governing the exercise of this jurisdiction in a matter relating to the award of public contracts. Even if the Court were to come to the conclusion that the administrative decision is a possible decision to be arrived at on the basis of the material on record, the Court would not be inclined to interfere.

47. Both the petitions are accordingly dismissed. No costs.

48. All pending interim application(s), if any, stand disposed of.

(AMIT BORKAR, J.) (CHIEF JUSTICE)