

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.174 OF 2015

Shree Balaji Minings
Through its Proprietor

- PETITIONER

VERSUS

1) The State of Maharashtra
and others.

- RESPONDENTS

Mr.Devdatt P.Palodkar, Advocate for Petitioner/s
Mrs.VA Shinde,AGP for Respondents.

**CORAM : R.M.BORDE &
N.W.SAMBRE, JJ.**

DATE : 14th January, 2015.

PER COURT:

1) The petitioner is taking exception to auction proceedings in respect of allotment of sand-spot conducted in pursuance to Tender Notice published on 24.12.2014. The petitioner states that the offers received during E-tendering process were made available for consideration to all the bidders, who participated in process of E-tendering as well as E-bidding and disclosure of such offers has resulted in formation of cartel by the contractors, as a result of which, revenue generation during auction process has been adversely affected.

2) In accordance with the policy in respect of allotment of sand-belts, contractor/bidder desirous of acquiring sand-belts on lease basis, is required to submit E-tender. On consideration of offer received during E-tender process, the authorities are expected to hold e-bidding process. It is informed by the respondents that the contractors/bidders, who fail to participate during E-tendering process are eligible to participate in E-bidding process, meaning thereby, it is not necessary for the contractor/bidder to participate in both the process i.e. E-tendering as well as E-bidding. It is also clarified that the highest offer during E-tendering process may not necessarily participate in E-bidding process and his bid received during E-tendering process shall also be considered to be valid for all the purposes.

3) Learned Counsel appearing for the petitioner, in order to substantiate his contention that as a result of disclosure of the material particulars in respect of offer of each of the bidder, recorded during E-tendering process, revenue generation of the State Government, is affected and lowered down to great extent, pointed out that the highest bids received during E-bidding process are only within the range of ten to fifteen thousand rupees, over and

above the highest offer quoted during E-tendering process, which is considered to be a revised benchmark for E-bidding.

. Learned Counsel has pointed out that while undertaking the process of auction of sand-belts in Beed district, the authorities did not make disclosure of the highest offer received during e-tendering process and the names of individual bidders, who participated in E-tendering process were also withheld. As a result of adopting such procedure, as against offset price prescribed by the State Government at Rs.6,15,407/-, highest bid received for sand-belt of Manubai Jawala Tq. Georai district Beed was for an amount of Rs.46,65,460/-. In case of sand-belt at Chatra Borgaon Tq. Majalgaon Maradasgaon Tq. Pathri, as against the offset price of Rs.23,21,567/-, the highest bid received during E-bidding was to the tune of Rs.2,40,000/-. In contrast to these offer, so far as Aurangabad District is concerned, in respect of sand belt at village Waghadi, Tq. Paithan, which is also a part of Godavari river, as against the offset price prescribed at Rs.47,40,000/-, the highest bid received during E-bidding was only Rs.10,000/- above prescribed limit, i.e. 47,50,000/-. In case of Purangaon Tq. Vaijapur, sand belt, as against the offset price of Rs.35,12,796/-, the highest bid received

during E-bidding was only with a difference of Rs.5,000/- at Rs.35,17,796/-. So far as village Bhalgaon Tq. Vaijapur is concerned, as against offset price of Rs.75,20,700/- the price offered during E-bidding was only to the extent of Rs.75,25,700/-, i.e. marginal difference of Rs.5,000/-. Similar is the case in respect of sand belts in Sillod and Phulambri talukas, covering a stretch of Purna and Girja rivers.

4) The facts and figures disclosed above, go to substantiate the contention of the petitioner that the contractors have formed a ring/cartel and quoted the figures, which are marginally higher than the offset prices prescribed by the State Government so far as Aurangabad district is concerned.

5) Learned AGP, on instructions from the Additional Collector, Aurangabad, makes a statement that the entire process of E-bidding and E-auction so far as Aurangabad district is concerned, would be undertaken afresh and the tender process conducted up to the present stage would be treated as cancelled. It is further clarified that such of those contractors, who deposited the amount, while recording their participation in e-tendering or e-bidding process and who have deposited the amount, would be

considered eligible for their participation during fresh process and amount deposited by them would be taken into account and in the event of any shortfall only differential amount would be claimed.

6) So far as the contention raised by the petitioner that only such of those bidders, who participated in E-tendering process, shall be permitted to take part in E-bidding process, is not acceptable as the scheme does not stipulate such restrictions. In this regard, it may be noted that an identical challenge raised before the Division Bench at Nagpur in the matter of Arunodaya Magaswargiya Mazdoor Kamgar Sahakari Sanstha Ltd. Vs. State of Maharashtra and Ors. Reported in 2013 (2) Bom.C.R.43. While considering the objection raised in the aforesaid petition, the Division Bench has made observations in paragraph 23 of the judgment, which are quoted thus, -

"23. The purpose of resorting to e-tender or e-auction and object behind it is not in dispute. After e-tender, the highest tendered value has been recognized as offset price and e-auction has commenced from that stage. Thus, while offering bids in e-tendering process, each

bidder was given opportunity to quote maximum value as per his best judgment. Thereafter, the process of e-auction (as named and devised) gave him second opportunity which in fact is likely negotiation amongst/between the registered bidders only...."

7) Thus, the contention of the petitioner that participation in E-bidding process is available and shall be restricted only to such of those offerers/bidders, who participate in e-tendering process, is devoid of merit. It would be open for all the registered bidders, who participated in e-tendering process, to participate in E-bidding process as well. Those who desires to participate in e-bidding process deposit the requisite amount with the authorities and register themselves, shall also be considered as registered bidders and their participation shall be permitted. An option shall be available to bidder who participates in E-tender process only and does not take part in E-bidding to keep his original offer alive and valid for consideration.

8) It is also informed that the tender process initiated by the respondents, which is

the subject matter of challenge in this petition, has not come to an end and the bidders have not been communicated any decision after conclusion of E-bidding process by the authorities. In this view of the matter, none of the bidders, who participated in the process are affected since there is no concluded contract.

9) In view of the statement made by learned AGP on behalf of the Additional Collector informing that they will initiate the auction process of sand-belts/spots in Aurangabad district *de novo*, the grievance raised by the petitioner in the instant petition, stands redressed and the petition stands disposed of accordingly.

(N.W.SAMBRE)
JUDGE

(R.M.BORDE)
JUDGE

bdv/