

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

WRIT PETITION NO. 6244 OF 2015

M/s Express Engineers
& another

.. PETITIONERS

VERSUS

Union of India
& others

.. RESPONDENTS

Mr. Pradeep Deshmukh, advocate holding for Mr. Y.P. Deshmukh, advocate for petitioners.

Mrs. M.A. Deshpande, AGP for the State.

Mr. S.B. Deshpande, ASG for respondents 1 and 2.

WITH

WRIT PETITION NO. 5520 OF 2015

M/s Express Engineers
& another

.. PETITIONERS

VERSUS

Union of India
& others

.. RESPONDENTS

Mr. Pradeep Deshmukh, advocate holding for Mr. Y.P. Deshmukh, advocate for petitioners.

Mrs. M.A. Deshpande, AGP for the State.

Mr. S.B. Deshpande, ASG for respondents 1 and 2.

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CORAM : R.M. BORDE &

P. R. BORA, JJ.

DATE : 5th AUGUST, 2015

PER COURT :

1. Petitioners are objecting to the composite tender process initiated by the CPWD - respondent no. 2 herein for execution of construction work of tenement, undertaken for the benefit of Border Security Force.

2. The basic grievance of petitioners is that composite tender for execution of electrical and civil work is not permissible in view of judgment of the Division Bench of this Court in matter of Aurangabad Electrical Contractors Association Vs. State of Maharashtra in Writ Petition no. 3196/2013. In the aforesaid matter, resolution issued by the Government of Maharashtra on 27.01.2014 and Circular dated 24.03.2011 issued by Public Works Department of the State of Maharashtra were subjected to challenge. In the aforesaid writ petition, it was contention of petitioners that by framing the policy by the State of Maharashtra on 27.01.2004, the class of electrical contractors is being discriminated since they are put out of competition, and denied participation in the tender process for execution of electrical work. The Government policy facilitates only civil contractors to participate in the tender process and, for execution of composite tender work, civil contractors were expected to appoint electrical sub-contractors. It was thus contended that the State is not providing level playing field in the matter of award of contract and the class of electrical contractors has been kept away from the competition.

3. In the judgment of Kerala High Court in Writ Petitions 28113/2009-H and 30556/2009-L, a view is adopted that the State Government is under obligation to provide level playing field to both the categories of contractors and as such, proceeded to direct quashment of the policy framed by the State Government in that regard. Instant matter is however, distinguishable for the reason that CPWD has not discriminated amongst the classes of

contractors. It is recorded in the affidavit-in-reply presented on behalf of the respondents that the category of electrical and APQ contractors of E&M services is modified to composite category in the respective classes and they are now eligible for participating in the tender for any work up to their tendering limit. It is further stated in affidavit-in-reply that all the existing contractors of civil, electrical and annual pre-qualification contractors of CPWD are eligible for participating in composite/civil/electrical/E&M services as per enhanced limit for three years i.e. from 01.05.2015 to 31.03.2018 as a one time measure. It is contended that in view of modification, the grievance of civil, electrical, APQ contractors and E&M services are redressed by enhancing their existing tender limit of Class I/A contractors ranging from 3 to 7 crores, upto 20 crores and, they will not be able to participate in the tender pertaining to composite work i.e. civil work, electrical work, E&M services and other specialised work costing upto 20 crores.

4. Learned Assistant Solicitor General for Union of India, on instructions, states that there is no separate qualification requirement prescribed in relation to execution of civil work for an electrical contractor who desires to participate in the tender process and that his experience to execute electrical work would be valid consideration. In view of the clarification made by learned ASG, in our view, the grievance raised by petitioners in the instant petitions stands redressed. The ratio laid down in the judgment cited supra is not applicable to the facts of the instant petition as such, decision of respondents cannot be faulted with. Writ petition

stands dismissed. Interim relief, granted earlier, stands vacated.

5. Parties to act upon authenticated copy of the order.

(P. R. BORA)
JUDGE

dyb

(R. M. BORDE)
JUDGE