

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

WRIT PETITION NO. 7626 OF 2014

JMK Info-Tech Aurangabad

.. PETITIONER

VERSUS

State of Maharashtra
& others

.. RESPONDENTS

Mr. Girish Thigle, advocate holding for Mr. R.F. Rothe, advocate for petitioner.

Mrs. A.V. Gondhalekar, AGP for the State.

Mr. D.P. Palodkar and Mr. S.R. Dheple, advocates for respondents 4 and 5.

=====

CORAM : R.M. BORDE &

P. R. BORA, JJ.

RESERVED ON : 10th SEPTEMBER, 2015.

PRONOUNCED ON : 28th OCTOBER, 2015.

PER COURT :

1. Petitioner is objecting to the decision taken by respondent no. 3 – The Collector and Chairman, District Setu Committee, Beed, to award tender work in favour of respondents 4 and 5. The decision of award of contract in favour of respondents 4 and 5 has been taken by the District Setu Committee on 26.11.2013 and further orders directing selected bidder to commence the work has been issued on 01.08.2014 and 05.08.2014.

2. Respondent – District Setu Committee floated tender inviting applications from the eligible parties to set up Setu facility centre (Setu Suvidha Kendra) in Beed district. Petitioner was one of the bidders whereas respondents 4 and 5 also participated in the process and were declared successful. According to petitioner, respondents 4 and 5 are not eligible to participate in the bid process and their tender is liable to be rejected since they do not meet the eligibility criteria. Petitioner contends that

respondents do not fulfil the pre-bid qualification mentioned in paragraph no. 3.2 of the tender document and more particularly, clauses a, b, c and e noted thereunder. Paragraph 3.2 of the tender document prescribes pre-bid qualifications which are quoted as below :

3.2 PRE-BID QUALIFICATION

This invitation for bids is open to bidders that are eligible to do business in India under relevant Indian laws as is in force at the time of Bidding except those who have been declared by any agency of the Government of Maharashtra to be ineligible to participate for corrupt, fraudulent or any other unethical business practices during the period for which such ineligibility is declared at the date of submission of bid.

- a. The Bidder should be in operation since last 3 financial years as on 31st March 2013 (put the latest year) as a company under Companies Act 1956 or a Partnership firm under the Partnership Act, 1932 as on the date of submission of bid.
- b. The Turnover of the bidder in installation and maintenance of hardware, development of software, installation and maintenance of complex LAN / Wide Area Networks and/or providing I.T. Enabled customer service, shall be atleast Rs. 50 lakh in each of the preceding three financial years (C.A. Certificate is necessary for each of last three years)
- c. Bidder must have managed and/or owned at least 10 ICT outlets every year, in the last three years (kiosks / counters / centers / CFC /CSC/Setu Kendra/Suvidha Kendra/Passport Seva Kendra etc) delivering services to citizens.
- d. The bidder should have employed at least 20 I.T. Professionals. For this purpose, the term IT professional means a person with a graduate degree/Diploma or a higher qualification in computer or Information Technology areas from a recognized university or equivalent. The IT professionals should be on the payroll of the company as on date of submission of bid. Latest PPF / TDS statements and salary payouts

documentation certified by authorized signatory to be made available as evidence for employment.

e. The Bidder shall have Service Tax Clearance upto March 2013.

f. Bidder should not be blacklisted by Central / State Government at the time of submission of the bid.

Apart from the objection as regards pre-bid qualification, petitioner contends that respondents 4 and 5 cannot be considered to be bidders within meaning of the definition contained in paragraph 1.2(b) of the tender document. Respondents 4 and 5 neither constitute any firm or person, entrepreneur offering the solution, service and/or material required in the tender and as such, cannot be considered as operators as per the terms of the contract. The third objection raised by petitioner is in respect of constitution of the District Setu Committee. It is alleged that six non-official members were permitted to participate in the decision making process and as such, the whole process is vitiated.

3. Affidavit-in-reply has been presented on behalf of the Collector as well as the successful bidders. Objection raised by petitioner in respect of respondents 4 and 5 failing to comply pre-bid qualification has been denied by the contesting respondents. It is pointed out that since respondents 4 and 5 constitute a consortium as per the decision taken in pre-bid meeting, they are qualified to participate in the bid process. It is further pointed out that technical evaluation has been done by the experts and during the process of technical evaluation, the Chairman and the Secretary of the District Setu Committee have rendered the decision. The decision in respect

of award of contract has been taken by the District Setu Committee and as such, there is no violation of the norms prescribed by the State Government in that regard.

4. On consideration of the contentions raised by both the parties, we are of the opinion that the challenge raised to acceptance of tender of respondents 4 and 5 is devoid of substance. The petition has been presented with a view to delay the process of award of contract and the petitioner is guilty of creating impediment in the tender process. After hearing learning counsel appearing for the respective parties, we are satisfied that objections raised by petitioner concerning non-fulfilment of requisite pre-bid qualification by respondents 4 and 5 is devoid of substance. It also cannot be denied that during the pre-bid meeting, clarification has been issued that a consortium is eligible to participate in the process subject to tendering an affidavit, which condition is fulfilled by respondents 4 and 5. It also does transpire on perusal of the proceedings that during technical evaluation the petitioner has been awarded 97.45 marks whereas respondent Pentagon Security System has been awarded 97.90 marks. The offer made by respondents was found to be competitive. It is also noticed that the decision taken by respondents in selecting respondents 4 and 5 for awarding contract does safe-guard the financial interest of the State Government. The decision taken cannot be said to be against the public interest and as such, in view of the law laid down by the Supreme Court in the matter of Raunaq International Ltd. Vs. I.V.R. Construction Ltd. reported in **(1999) 1 SCC 492**, within limited jurisdiction

exercisable by the High Court, no interference is called for in the instant petition.

5. Certain other aspects referable to the petitioner's bonafides also need to be looked into. It is to be noted that the tender notice was published by the District Setu Committee way back on 23.08.2013. The pre-bid meeting was held on 16.09.2013 whereunder consortium or joint venture is allowed to participate in the tender process. At initial stage, petitioner and respondents were found qualified, however, since the requirement of 3rd qualified bidder participating in the tender process was not satisfied, second call was given. During the second call, one more bidder i.e. Gujrat Infotech Pvt. Ltd. came forward and, after assessing pre-bid qualification and detailed technical solution, respondents 4 and 5 were found to be eligible. Decision was accordingly taken to accept the offer of respondents. Petitioner was not happy with the decision and as such, he approached the Honourable State Minister for Revenue with a request to cause interference in the tender process. The Honourable Minister surprisingly caused interference in the tender process and granted stay thereby interrupting the whole process. The order of stay continued till 09.07.2014 until the concerned Minister directed vacation of stay order. After vacation of the order of stay by the Honourable Minister, the Setu Committee directed the selected bidder to take possession of 11 Setu centers, however, he could taken possession of only 3 centers. Petitioner again approached the Honourable Minister with a request to grant stay to the process on 07.08.2014 and the request of the petitioner was again surprisingly accepted

by the Honourable Minister who directed stay of further process. Respondents presented writ petition bearing no. 7275/2014 challenging the order of the Honourable Minister and this Court, by way of interim order directed stay to the order passed by the Honourable Minister which facilitated the District Setu Committee to take further steps. Petitioner during the pendency of the matter before the Honourable Minister, approached this Court by presenting instant petition making grievance in respect of acceptance of the offer of respondents 4 and 5. Considering the sequence of events, we are of the view that petitioner has successfully stalled the process for more than two years without any reason. The Honourable Minister also ought not to have caused interference in the on going tender process at the instance of the petitioner.

6. As has been recorded above, it is noticed that neither the financial interest of the State Government is jeopardised nor any issue of public importance is involved in the matter. As such, no interference need to be caused in the petition at the instance of the petitioner whose bonafides are questionable. It is also worth to be noted that respondents, in pursuance of the allotment of order by the District Setu Committee, has operationalised the Setu centers in the district and those centers are functioning since last one year. In view of this, at this late stage, no interference is called for in the instant petition. Writ petition is devoid of substance hence stands rejected.

(P. R. BORA)
JUDGE

dyb

(R. M. BORDE)
JUDGE