

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDCITION

WRIT PETITION NO.11087 OF 2014

M/s. Hughes & Hughes Chem. Ltd.	..Petitioner.
vs.	
Govt. of India and ors.	..Respondents.

Mr. M.M.Sathaye for the Petitioner.
Mr. T.J.Pandian for Respondent Nos. 1 to 3.

CORAM : A.S.OKA AND
A.P. BHANGALE, JJ.
DATE : 30TH MARCH, 2015

PC:

Heard learned counsel appearing for the petitioner and the learned counsel appearing for 1st to 4th respondents. The issue in this petition relates to the tender notice published by the 3rd respondent Divisional Railway Manager (Mechanical), Pune Division, Central Railway Pune calling for the bids for the work of Pest & Rodent control in railway coaches, yards and depots etc. for various parts of the Pune Division. The petitioner company is registered as a Small Scale Unit with the National Small Scale Industries Centre and is maintaining licenses for the pest control

services in various States. Though the petitioner participated in the tender process, it claimed exemption from payment of earnest money deposit in view of its registration with NSSIC. However, the tender submitted by the petitioner was not considered on the ground that the petitioner had not deposited the earnest money deposit amount. We must note here that the present petition was filed by the petitioner on 3 December 2014. There is an affidavit in reply filed by Shri. Manish Pradhan, Sr. Divisional Mechanical Engineer, Central Railway, Pune Division in which it is stated that the contract in question was already awarded by issuing a work order dated 18 November 2014 to the 5th respondent. In view of this statement, now at this stage, no relief can be granted to the petitioner as regard the tender process subject matter of the challenge in this petition.

2) However, learned counsel appearing for the petitioner urged that the issue raised by the petitioner will remain inasmuch as in case of similar tenders, the petitioner may be prevented from offering bid on the ground that it has not deposited the earnest money deposit. He invited our attention to the circular dated 5 December 2014 issued by the Railway Board which is addressed to all the Chief Mechanical Engineers of all Zonal

Railways. It is necessary to consider the said circular. The subject of the circular is "Public procurement policy for goods produced and services rendered by Micro and Small Enterprises (MSEs) by Central Ministries/Departments/Public Sector Undertakings (PSUs)". It appears from the said circular that the Central Railway has raised a doubt about the applicability of various guidelines issued by the Railway Board. Relevant part of the said circular reads thus :-

"The issue was clarified by Railway Board's letter dated 23.09.2013 that the policy order is effective from 02.04.2012 on all the contracts of goods services produced and provided by micro and small enterprises irrespective of the department issuing the tender contract. Railway Board has sought clarifications from Ministry of MSME on the issue of applicability of 15% price preference clause and reserving 20% quantity in favour of MSME contained in para 2 (iii) and (iv).

In view of the above, it is clarified that the following given in para 2(i) and paras 2(ii) of letter referred at (I) above are applicable to the service tenders of Mechanical department like OBHS,CTS, mechanized cleaning, linen laundry and linen washing, pest and rodent control system etc. from the date of issue of original policy letter.

(I) Tender sets shall be provided free of cost

to MSEs registered with the above agencies for the item tendered.

(II) MSEs registered with the above agencies, for the item tendered will be exempted from payment of Earnest Money.”

3) On 18 December 2014, the Railway Board issued addendum to the said circular. Addendum reads thus:

“With reference to above referred letter on the above subject, it is further clarified that instructions contained in the letter are of the nature of special conditions issued by Government of India and will prevail over the Indian Railways Standard General Conditions of Contract (GCC).”

4) On conjoint reading of the circular and addendum, it is clear that policy guidelines are applicable to the service tenders of Mechanical Department like OBHS,CTS, Mechanized cleaning, linen laundry and linen washing, pest and rodent control system etc with effect from 1 April 2012. It is clarified that MSEs registered with requisite agencies for the items tendered shall be exempted from the payment of earnest money deposit.

5) In the affidavit in reply filed by Shri. Manish Pradhan and in particular in Paragraph 7, he has stated thus:-

“However, I say now, that after perusal of the Railway Board's instructions as contained in the Circulars dated 05.12.14, 18.12.14 clarifying that some of the benefits available to the SSU units would also be applicable to the Service Contracts in Railways Mechanical Branch, therefore the Mechanical department will take steps to get such conditions incorporated in the future tenders to be floated in compliance with the Railway Board's letters.”

6) Thus, the affidavit shows that the circular dated 5 December 2014 and Addendum dated 18 December 2014 are in force. Therefore, the Railways will have to give full effect to the said circular read with the addendum in the future tenders to be invited. As stated in the addendum dated 18 December 2014, the instructions contained in Circular dated 5 December 2014 are in the nature of special conditions issued by the Government of India which will prevail over the Indian Railways Standard General Conditions of contract.

7) Though no relief can be granted in this petition, we direct 3rd and 4th respondents to abide by the directions issued by the Railway Board covered by the Circular dated 5 December 2014 read along with the Addendum dated 18 December, 2014.

Thus, in case of future tenders which are covered by the Circular dated 5 December 2014, the Micro and Small Enterprises registered with the relevant agencies for the relevant items tendered shall be exempted from the payment of earnest money deposit.

8) As is clear from circular dated 5 December 2014, the same is applicable to the tenders for procurement policy for goods produced and services rendered which are specified in the said circular including pest control and rodent control system.

9) Subject to directions issued above, petition is disposed of.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)