

**FARAD CONTINUATION SHEET No.**  
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO. 7223/2014**

(ABU CONSTRUCTION, CHANDRAPUR **VERSUS** MAHARASHTRA STATE POWER  
GENERATION COMPANY LIMITED, MUMBAI & OTHERS)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri S.Z. Sonbhadre, counsel for the petitioner.  
Shri G.E. Moharir, counsel for the R-1 & 2.  
Shri A.S. Kilor, counsel for the R-3.

**CORAM : SMT. VASANTI A. NAIK AND**  
**A.S. CHANDURKAR, JJ.**

**DATE : AUGUST 11, 2015.**

By this petition, the petitioner had challenged the additional criteria of qualifying requirement at 2(c) in the tender notice in respect of Maintenance of Hydro Ejectors, Bottom Ash, Coarse Ash, Evacuation System/Maintenance of Ash Slurry Pumps & Slurry Disposal System and Maintenance of Hydro Ejectors, Bottom Ash, Coarse Ash, Evacuation System/Maintenance of Ash Slurry Pumps & Slurry Disposal System. The petitioner has sought a direction to the respondent nos.1 and 2 to disqualify the respondent no.3 from the tender process. By amending the writ petition, the petitioner has challenged the Draft Purchase Order dated 19.12.2014 issued by the respondent nos.1 and 2 in favour of the respondent no.3 in pursuance of Tender Code No.7616.

We had by an order dated 22.12.2014 declined to entertain the writ petition insofar as the challenge to Condition No.2(c) of the eligibility criteria in the tender for evacuation of Dry Ash is concerned. According to the petitioner, the respondent no.2 had illegally inserted Clause 2 (c) only with a view to favour the respondent no.3. We, however, declined to entertain the writ petition in respect of the first prayer made in the writ petition as

the petitioner had not challenged the said condition before participating in the tender process. In view of the law laid down by the Hon'ble Supreme Court in the judgments reported in **(2009) 3 SCC 227** (*Amlan Jyoti Borooah Versus State of Assam & Others*), **(1997) 4 SCC 426** (*University of Cochin, represented by its Registrar, University of Cochin Versus N.S. Kanjoonjamma & Others AND V. Vasudevan Versus University of Cochin & Others*), **(2008) 4 SCC 171** (*Dhananjay Malik & Others Versus State of Uttaranchal & Others*), **(2010) 12 SCC 576** (*Manish Kumar Shahi Versus State of Bihar & Others*) and **(2011) 1 SCC 150** (*Vijendra Kumar Verma Versus Public Service Commission, Uttarakhand & Others*), we had held that the relief sought by the petitioner by prayer clause (i) cannot be granted. It would, therefore, not be necessary to consider the prayer made by the petitioners by prayer clause (i) as it stands rejected.

The tender was floated by the respondent no.2 in respect of Annual Work Contract for Mechanical Maintenance of ESP Hoppers Dry Fly Ash Evacuation, HCSD & Ash Utilization Silo Systems Ash Handling Plant Unit 5, 500 MW Khaparkheda TPS. According to the tender notice, a tenderer was required to complete either three similar works each costing not less than the amount equal to the 40% of the estimated cost or two similar completed works each costing not less than the amount equal to 50% of the estimated cost or one similar work costing not less than the amount equal to 80% of the estimated cost. The estimated cost of the tender was Rs.61,03,500/-. The respondent no.3 had participated in the tender on the basis of two similar completed works each costing not less than the amount equal to 50% of the estimated cost. According to the respondent no.3, the estimated cost of one completed work was Rs.45,00,000/- and the estimated cost of the other completed work was Rs.39,00,000/-. It is the case of the petitioner that though the respondent no.3 had tendered the documents in respect of completion of two similar works costing

not less than the amount equal to 50% of the estimated cost, the respondent no.3 had not tendered or furnished the copy of the performance certificate along with the tender, though the same was necessary. Secondly, along with the Techno Commercial Bid, according to the petitioner, it was necessary for a tenderer to upload the Labour License. It is the case of the petitioner that the respondent no.3 did not furnish a copy of the Labour License along with the tender though it is clearly mentioned in the tender notice that submission of the Labour License was mandatory for participation in the tender. According to the petitioner, since the respondent no.3 did not furnish a copy of the performance certificate in respect of the completed work and also failed to upload the Labour License, the bid of the respondent no.3 was liable to be rejected.

The respondent nos.1 and 2 and the respondent no.3 have filed separate affidavits-in-reply. According to the respondents, the respondent no.3 had completed two works of similar nature each costing not less than the amount equal to 50% of the estimated cost. It is stated that the respondent no.3 had completed two works amounting to Rs.45,00,000/- and Rs.39,00,000/- respectively. It is stated that the said works were costing not less than the amount equal to 50% of the estimated cost, i.e. Rs.30,51,750/-. It is submitted that though the respondent no.3 had not submitted the performance certificate along with the corresponding work order, since the two similar works were completed by the respondent no.3 in respect of the contracts issued by Koradi Thermal Power Station which is a part of the Maharashtra State Power Generation Company Limited, the respondent no.2, the Chief Engineer of Khaparkheda Thermal Power Station was satisfied on enquiry that the respondent no.3 had successfully completed the two similar works costing not less than the amount equal to 50% of the estimated cost. It is submitted that since Koradi Thermal Power Station and Khaparkheda Thermal

Power Station are a part of the Maharashtra State Power Generation Company Limited, it was verified by the respondent no.2 from Koradi Thermal Power Station in regard to the satisfactory completion of the two work contracts costing not less than the amount equal to the 50% of the estimated cost. It is submitted that the qualifying requirement was only in respect of the completion of works equal to not less than 50% of the estimated cost and the performance certificate was a document in support of the completion of the two similar works. It is stated that it is clear from the comparative chart tendered by the respondent nos.1 and 2 along with the affidavit-in-reply that the respondent no.3 qualifies in the tender as per the requirements of the tender notice. It is submitted that the respondent no.3 had not tendered the Labour License along with the tender as at the relevant time, the respondent no.3 had not employed more than twenty labourers and it was therefore, not necessary to secure a Labour License in view of the provisions of Contract Labour (Regulation and Abolition) Act, 1970. It is stated that the said fact was brought to the notice of the respondent nos.1 and 2 by the communication of the respondent no.3 at the time of submission of tender and immediately after the contract was awarded, the respondent no.3 employed more than twenty labourers and furnished the license to the respondent nos.1 and 2. It is submitted that it is apparent from the provisions of the Special Terms and Conditions appended to the tender that Labour License would be applicable as per Contract Labour (Regulation and Abolition) Act, 1970 and rules framed thereunder. It is stated that since in view of the provisions of the Act of 1970 a license was not required when less than twenty labourers were engaged, the license could not have been tendered at the time of submission of the tender. It is submitted that the respondent no.3 has successfully completed a major part of the contract during the pendency of the writ petition and it would be necessary to dismiss the writ petition in the circumstances of the case.

On hearing the learned counsel for the parties and on a perusal of the affidavits-in-reply filed on behalf of the respondents, it appears that the petitioner has failed to make out a case that the respondent nos.1 and 2 had allotted the work order in favour of the respondent no.3 by violating the terms and conditions of the tender notice. It appears from the affidavits-in-reply filed on behalf of the respondents and the documents annexed thereto that the respondent no.3 had completed two similar works each costing not less than the amount equal to 50% of the estimated cost at the time of submission of the tender. The respondent no.3 had completed two works of similar nature costing Rs.45,00,000/- and Rs.39,00,000/- respectively. Since the performance certificate was not issued by the Koradi Thermal Power Station to the respondent no.3 in respect of the completed work by then, the respondent no.2 enquired from the Koradi Thermal Power Station in regard to the successful performance of the work order by the respondent no.3 in respect of two similar completed works. Khaparkheda Thermal Power Station that had floated the tender notice and Koradi Thermal Power Station are a part of the Maharashtra State Power Generation Company Limited. The respondent no.2, therefore, enquired with Koradi Thermal Power Station in respect of the completion of two similar works by the respondent no.3 and it is stated that Koradi Thermal Power Station informed the respondent no.2 in respect of the successful completion of two work orders in terms of the qualifying requirements *vide* Clause b. It appears that the respondent nos.1 and 2 were satisfied that the respondent no.3 had completed two similar works each costing not less than the amount equal to 50% of the estimated cost and the respondent no.3 was better placed than all the tenderers and, hence, they decided to award the purchase order in favour of the respondent no.3. We find, on a perusal of the material on record that the respondent no.3 had qualified for the tender by completing two similar works each costing not less than the amount equal to 50% of the

estimated cost. The objection raised by the petitioner in that regard is meritless. The second objection of the petitioner in regard to the non-tendering of a Labour License is also liable to be rejected. Though it is stated in the Techno Commercial Bid that it would be necessary to tender the valid Labour License, it is clear from the special terms and conditions that the Labour License is applicable as per the Contract Labour (Regulation and Abolition) Act, 1970 and rules framed thereunder. At the relevant time, when the tender was floated, the respondent no.3 had engaged less than twenty labourers and had, therefore, furnished an undertaking that if the work contract is awarded to the respondent no.3, the respondent no.3 would furnish the Labour License. It appears from the documents annexed to the affidavit-in-reply on behalf of the respondent no.3 that the Labour License was secured by the respondent no.3 after the purchase order was awarded to the respondent no.3 and the same was furnished to the respondent nos.1 and 2. In the circumstances of the case, we do not find that the tender conditions were breached with a view to favour the respondent no.3. The judgments reported in **(2012) 8 SCC 216** (*Michigan Rubber (India) Limited Versus State of Karnataka & Others*), **2007(2) BCR 709** (*B. Himmatlal Agrawal & Another Versus Western Coalfields Limited & Others*), **(1979) 3 SCC 489** (*Ramana Dayaram Shetty Versus International Airport Authority of India & Others*) and the **unreported judgment** of this Court in **Writ Petition No.434 of 2014, dated 12.03.2014** and relied on by the counsel for the petitioner cannot be made applicable to the facts of this case. In fact, it is observed in the judgment reported in **(2012) 8 SCC 216** (*Michigan Rubber (India) Limited Versus State of Karnataka & Others*) that if the State or its instrumentalities act reasonably and fairly in awarding the contracts, interference by the Courts should be very restrictive. It is further observed that two questions should be posed by a Court before interfering in tender or contractual matters; i) Whether the process adopted or decision

made by the authority is *mala fide* or intended to favour someone; or ii) Whether the public interest is affected. We have posed the said questions to ourselves and have answered them in negative, in this case. The judgment reported in **2007(2) BCR 709** (*B. Himmatlal Agrawal & Another Versus Western Coalfields Limited & Others*) and the unreported judgment in **Writ Petition No.434 of 2014, dated 12.03.2014** are clearly distinguishable on facts. In the case in the unreported judgment, on a perusal of the material on record, this Court had recorded a clear finding that the respondent no.2 to whom the contract was awarded had not completed the works of similar nature with the Maharashtra State Power Generation Company Limited, which was the respondent therein also. It is held in the judgment reported in **(1979) 3 SCC 489** (*Ramana Dayaram Shetty Versus International Airport Authority of India & Others*) that the standard of eligibility as laid down in the notice of tender cannot be departed from arbitrarily. We have recorded hereinabove that there is no departure from the terms of eligibility, much less, an arbitrary departure.

Since we do not find any merit in the submissions made on behalf of the petitioner, the writ petition is dismissed with no order as to costs.

**JUDGE**

**JUDGE**

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