

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7252/2014.

M/s. Supreme Transport Co. Aurangabad.

-VERSUS-

The Maharashtra State Electricity Transmission Co. Ltd., Wardha.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI
& P.N. DESHMUKH, JJ.**

DATE : AUGUST 25, 2015.

Heard Shri F.T. Mirza, learned Counsel for
the petitioner and Shri A.D. Mohgaonkar, learned
Counsel for the respondent.

2. Respondent has floated a tender for
Transportation of EHV Transformers, Transportation
of various materials, Hiring of Crane, Loading and
unloading of various materials from various sub-
station site to a desired location under EHV, O & M
Division, Wardha. The conditions incorporated therein
are challenged by the petitioner. The condition (b)

2

requires the bidder to possess experience in transportation within a period of last 5 years, thus, experience before said period of 5 years has not been accepted as valid. Similarly, last part of clause (c), which disregarded the experience of joint venture company has also been assailed.

3. Learned counsel appearing for the petitioner states that petitioner is a partner of M/s. Aditya Vidhut Applications Ltd. and that Firm has done the desired work, hence, that experience cannot be disregarded. Support is being taken from the judgment of Hon'ble Supreme Court reported in AIR 1969 SC 1081 (Rasbihari Pande .vrs. State of Orissa) and AIR 1999 AP 318 (M/s. Avula Constructions Pvt. Ltd. .vrs. Sr. Div. Electrical Engineer and others), to substantiate these contentions.

4. Shri Mohgaonkar, learned counsel appearing on behalf of the respondent submits that the terms and conditions are not irrelevant and respondent has got jurisdiction and power to impose the same for uniform application. He states that looking to the responsibility fastened upon the transporter, and of

3

doing same work in last 5 years, was felt necessary. Similarly, experience of joint venture companies has been disregarded, as the experience demanded is of power sector bodies of State Government/Central Government or Reputed Transmission Agency. The experience of private parties/bodies is not considered for evaluation in this contract. He submits that the petitioner does not possess the experience of doing such work for power sector bodies of State Government/Central Government or Reputed Transmission Agencies.

5. With the assistance of learned counsel for the parties, we have perused the papers.

6. Petitioners have not shown the terms and conditions as imposed, are irrelevant and lack nexus with the object. Thus, this court has to find out whether the conditions are arbitrary. The insistence that similar type of work should have been done in last 5 years by a bidder cannot be said to be ill-founded, and therefore, perverse. During arguments, when a specific question was put to the petitioner, petitioner has accepted that the petitioner does not have experience of working for such public sector bodies or

4

reputed transmission agencies. In this view of the matter, elimination of joint venture companies by itself does not result into any prejudice to the petitioner.

7. The judgment of Hon'ble Supreme Court in case of *Rasbihari Panda .vrs. State of Orissa*, considers a monopoly with State in Kendu leaves and in that the condition of inviting tenders from licencees who had purchased said leaves or carried out their contract satisfactorily, was found unsustainable. Hon'ble Supreme Court finds that disposal of Kendu Leaves by State ought to be in public interest and not to serve private interest of any person or claim of persons. Petitioner before us has not pointed out any such person or claim of persons.

8. Judgment in case of *M/s. Avula Constructions Pvt. Ltd. .vrs. Sr. Div. Electrical Engineer and others*, states with the experience of a partner can be treated as a experience of firm. There cannot be any debate on this proposition. However, here the experience demanded is of work of power sector bodies mentioned supra, and admittedly the petitioner does not possess it.

9. We therefore, find no case is made out

warranting interference. Writ Petition is, therefore, rejected. No costs.

JUDGE

JUDGE

Rgd.