

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.145 OF 2016

M/s. Rushikesh Constructions,
Through its Proprietor,
Anand s/o Radhakishan Ghodile,
Age-46 years, Occu:Business,
R/o- Plot No.75, Gandhi Nagar,
Bansilal Nagar, Aurangabad.

...PETITIONER

VERSUS

The Union of India,
Through Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi-110 011,
and others.

...RESPONDENTS

...

Mr.R.J. Nirmal Advocate for Petitioner.
Mr.S.B. Deshpande, Assistant Solicitor General
for Respondent Nos. 1 to 3.
Mr.S.K. Kadam, A.G.P. for Respondent No.4.

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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 15TH JANUARY, 2016

ORDER :

1. The Petitioner is objecting to the tender

conditions incorporated in the tender notice issued by the Respondents for awarding work contract in respect of construction of a New Training Center -cum Workshop Building for Indo-German Tool Room as well as for construction of Boys Hostel for National Institute for Electronics and Information Technology at Aurangabad. The condition objected to by the Petitioner permits only CPWD (Central Public Works Department) recognized contractors to participate in the bidding process.

2. The Petitioner contends that during the earlier round of tender process even Non-CPWD registered contractors were permitted to participate and as such changing the conditions of eligibility during second round and fresh round of bidding process is not permissible.

3. An affidavit in reply has been presented on behalf of the Respondents, wherein it is stated

that CPWD Works Manual 2014 and more particularly Paragraph No.15.2.1 (1) prescribes that the tender documents for works costing up to Rs.20 Crores shall be invited only from the contractors registered in the CPWD in the appropriate category and class. Under Sub Rule (2), it is permissible for the Additional Director General of the Region to relax conditions for works costing up to Rs.20 Crores for a specific period that he may consider it necessary and may allow sale of tenders for such works to contractors registered with the Railways/MES/BSNL, State PWD's (B & R) or the departments of State Government dealing with (B & R) in appropriate classes.

4. In the instant matter, while issuing earlier tender notice on 21st September 2015, Non-CPWD contractors were permitted to participate in the process in view of the permission accorded by the Director on 18th June 2015. After the tenders were floated during the first round, one Non-CPWD

bidder who quoted the lowest rates, was found eligible. The selected contractor during the earlier round, tendered Writ Petitions in this Court being Writ Petition Nos. 10743 of 2015 and 10806 of 2015, requesting this Court to issue directions to Respondents to permit the said Petitioner to participate in the bidding process. This Court considered the request of the said Petitioner favourably and directed the Respondents to consider his tender offer. In accordance with the directions, the Respondents considered the tender offer of the said Petitioner and noticing that he has quoted the lowest amount, accepted his offer. However, the aforesaid Petitioner backed out and refused to perform his obligations and did not enter into agreement with the Respondent Department. The said Petitioner was permitted to withdraw the Petitions subject to costs amounting to Rupees One Lakh in each of the Petition.

5. Considering the past experience, the

Respondent Department reverted to its settled practice provided under CPWD Works Manual 2014 and called the tenders only from contractors registered with CPWD. It is informed that there are sufficient number of contractors registered with CPWD, available who can be considered for allotment of work. We do not find any irregularity in the decision taken by the Respondents. The decision taken is reasonable and proper and not arbitrary one.

6. The counsel for Petitioner placed reliance on the Judgment in the matter of **Tej Prakash Pathak and others vs. Rajasthan High Court and others, reported in 2013(4)S.C.C. 540**, as well as decision in the matter of **Bishnu Biswas and others vs. Union of India and others, reported in 2014(5)S.C.C. 774**. The decisions cited at Bar relate to the employment and the principle laid down thereunder is not applicable to the facts of the instant case. Apart from this, since we are of

the opinion that the action of the Respondents in pursuing tender process is reasonable and proper and there is no arbitrariness in the action, we do not deem it necessary to cause interference in the tender process. The tender process is not objected on the ground of lack of transparency or arbitrariness in the decision making process.

7. The Writ Petition is devoid of substance. The Writ Petition stands rejected.

[A.I.S. CHEEMA, J.]

asb/JAN16

[R.M. BORDE, J.]