FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.1309 OF 2007
WITH
C.A.NO.8063 OF 2007.

Hemant S/o Nandlal Taneja Vs. The State of Maharashtra and others.

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

Mr.S.S.Choudhari, advocate for the Petitioner.
Ms.S.S.Raut, A.G.P for the State.

CORAM : S.V.GANGAPURWALA AND K.K.SONAWANE,JJ.
Date : 14.06.2016.

PER COURT :

1. Heard.

2. Mr.Choudhari, learned counsel for the petitioner submits that the petitioner is a Contractor had submitted his tender, pursuant to the advertisement. The petitioner made representation on 7.9.2006 to the Respondents and stated that the charge at the rate of 0.75 for building work and 0.50 for road and bridges work should be incorporated in the rate analysis instead of in the recapitulation sheet, so that the Contractors can be compensated in respect of the VAT charges. The petitioner had submitted a tender on 19.12.2006 for the work involving construction of barracks for the Police

trainees. The tender of the petitioner was accepted. The work order was given to the petitioner. However, clause 6 in the work order dated 16.1.2007 and the additional conditions in the tender document are absolutely illegal. The same are in contravention of the PWD Manual. According to the learned counsel, as the said clauses are not in conformity with the PWD Manual, the same are illegal. The Respondents are required to be directed to calculate the rate analysis for framing the estimate at the higher rate as compared to the average quarterly market rate and the rates mentioned in the CSR for the commodities as mentioned in the GR dated 16.5.2005 and to treat the same rates as star rates. The Respondents are required to be directed to add VAT charges in the rate analysis instead of adding in recapitulation sheet.

3. Learned A.G.P. states that the petitioner has accepted the tender as per the terms and conditions and subsequently can not challenge the same.

4. We have considered the submissions. As far as VAT charges are concerned, the same is included in subsequent tenders, so also in respect of Insurance. The grievance of the petitioner is to consider the DSR rates for price variation. The parties are governed by the terms and conditions of the tender pursuant to which the tender is accepted and the work order is issued. Once a party accepts the tender and the work order, the said party is governed by

the said terms and conditions and can not resile from the same. It is well said that the rules of the game can not be changed, once the game is played. After having entered into the contract, the petitioner can not turn around and contend that the terms and conditions of the contract were improper. The petitioner had applied for the tender as was invited and now would be governed by the same. Deviation therefrom would not be permissible to either of the parties.

5. In subsequent tenders as stated above, the provision of VAT is already made in the terms and conditions of the tender, so also of the Insurance. The party inviting the tender will have a free choice to lay down the terms and conditions of the tender. The scope of the judicial review so far as said terms and conditions are concerned, would be in a narrow compass.

6. Considering above, the prayers made in the petition can not be considered. As such Rule is discharged. No costs.

7. In view of disposal of Writ Petition, the Civil Application stands disposed of.

(K.K.SONAWANE,J.) **(S.V.GANGAPURWALA,J.)**

Dt.14.06.2016.
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