

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.1491 OF 2016

M/s Vishal Intelligence Security Services ... PETITIONER

VERSUS

The State of Maharashtra & another ... RESPONDENTS

.....
Shri A.G. Talhar, Advocate for petitioner
Shri S.S. Dandge, A.G.P. for State
Shri N.B. Suryawanshi, Advocate for respondent No.2
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CORAM: R.M. BORDE AND
 A.I.S. CHEEMA, JJ.

DATED: 1st March, 2016.

ORAL ORDER :

1. The petitioner is objecting to the tender conditions issued by the respondents in the notice dated 25.1.2016. According to petitioner, the condition B(1) relating to eligibility criteria restricting the competition only amongst the limited company and private limited company registered under the Companies Act, 1956 and excluding the tenders from category of joint venture and consortium is restrictive condition not permissible within the parameters of principle of equality

propounded under Article 14 of the Constitution of India. The petitioner contends that, by restricting the competition, the respondents intend to make discrimination amongst the pool of contractors who are otherwise similarly placed. It is contended, putting such conditions amounts to extending discriminatory treatment to certain class of contractors and as such, same deserve to be quashed and set aside.

2. The respondents contend that the tender work is to the tune of Rs.38 Crores and the tender condition cannot be considered to be unfair since the private limited companies and the public limited companies have the perpetual succession. So far as the joint ventures and private limited companies are concerned, those are operated on the basis of individual responsibilities. It is further stated that, the manpower requirement of the Corporation is more than 1000 skilled/unskilled employees like Attendant-cum-Operators, Data Entry Operators-cum-Warehousing Assistants, Drivers, Stenos, Draftsmans and Junior Engineers. The estimated volume of work is spread over 191 locations across all districts of Maharashtra State. Considering the volume of work and the requirement of the respondents and the amount of tender value involved, it was decided to exclude the clause of joint venture of proprietary/partnership firm. It is contended that many entities controlled by

the Central Government and State Government adopt a similar policy. Reliance is placed on conditions floated in the tender issued by the Comptroller and Auditor General of India on 6.9.2011, wherein a condition was prescribed that only legally valid entity either in the form of limited company or private limited company registered under the Companies Act, 1956 shall be entitled to participate in the bidding process whereas the joint venture, consortium and proprietary/ partnership firms were excluded.

3. In case of Vasundhara Water Shed Development Agency, the body controlled by the State Government, in a short tender notice issued in the year 2015, similar condition has been incorporated. Same is the case in respect of the tender notice issued by the Department of Labour, Maharashtra State. It is contended that, the object is not to restrict the competition. The pool of eligible contractors meeting requisite eligibility criteria is available. It is further pointed out that, in response to the bid, four tender offers were received and three offerers have been short listed. Considering the explanation tendered by the respondents, we do not find that the basic requirement of Article 14 of the Constitution of India in respect of fairness as well as non-arbitrariness in performance of the functions has been given go-bye. It has been laid down by the Supreme Court in the

decision reported in **AIR 2012 SUPREME COURT 2915 [M/s Michigan Rubber (India) Ltd. Vs. State of Karnataka and ors.] :-**

"(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b)

(c) In the matter of formulating conditions of a tender document and awarding contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted.

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."

4. It would be open for the State to prescribe certain preconditions as qualification of tender to ensure that the contractor has financial resources to successfully execute the work. As long as the State and its instrumentalities act reasonably and fairly and in public interest in awarding contracts, the interference of the Court is very restricted since no person

can claim fundamental right to carry on business with the Government.

5. The Supreme Court, in the matter of Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and ors. [AIR 1999 SC 393], has reiterated the principle governing the scope of judicial review and held that the writ Court would not be justified in interfering with commercial transactions in which the State is one of the parties except where there is substantial public interest involved and in cases where the transaction is mala fide. In the instant matter, we do not find that the public interest has been jeopardised or that the action is tainted with malafides and as such, no interference is called for.

6. The petitioner seeks to place reliance in the matter of **Controller and Auditor General Vs. Kamlesh Vadilal Mehta [AIR 2003 SC 1096]**. On perusal of the judgment, we are of the considered view that the same has no applicability to the facts of the instant case as the judgment proceeds on the basis of totally divergent facts. The Writ Petition is devoid of substance, hence stands rejected.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)