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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5802/2016

M/s R.R. Kapoor,
through its partner
Rishi Rajesh Kapoor.
...Petitioner..

Versus

The State of Maharashtra & others.
...Respondents...

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Shri M.D. Narwadkar, Advocate for petitioner.
Shri A.R. Kale, AGP for respondent nos.1 to 4.
Shri M.S. Kulkarni, Advocate for respondent no.5.
Shri M.R. Sonawane, Advocate for respondent nos.6 & 7.

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CORAM: R.M. BORDE &
K.L. WADANE, JJ.
DATE: 21.07.2016

ORDER :

1] The petitioner is objecting to the award of tender work in favour of respondent nos.5 to 7, who are admittedly the lowest bidders. It is contended that Condition No.(4.4 B)(B)(i) is not complied with since the concerned respondents have not tendered the evidence in respect of the ownership and possession of the required machinery.

2] An affidavit in reply has been presented on behalf of the respondent nos.1 to 4 wherein it is stated that

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the requirement in respect of possession of the machinery shall have to be fulfilled by the bidders as and when required and is not a criteria to disqualify the bidders. Apart from this, it has been further stated that the concerned respondents do satisfy the requirement of possessing the required machinery.

3] As have been laid down in the matter of *Raunaq International Ltd. v. I.V.R. Construction Ltd. & others* reported at (1999) 1 SCC 492, the scope of interference in the matters relating to award of contracts is limited. In the instant matter, it has not been demonstrated that there is any loss of revenue accruable to the State Government nor that the decision of award of tender is tainted with arbitrariness or *mala-fides*. The relevant observations made by the Supreme Court are quoted below:-

“9] The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount importance are commercial considerations. These would be : (1) The price at which the other side is willing to do the work; (2) Whether the goods or services offered are of the requisite specifications; (3) Whether the person

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tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important; (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality; (5) past experience of the tenderer, and whether he has successfully completed similar work earlier; (6) time which will be taken to deliver the goods or services; and often (7) the ability of the tenderer to take follow up action, rectify defects or to give post contract services. Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10] What are these elements of public interest ? (1) Public money would be expended for the purposes of the contract; (2) The goods or services which are being commissioned could

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be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work - thus involving larger outlays or public money and delaying the availability of services, facilities or goods. e.g. A delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

11] When a writ petition is filed in the High court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of

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public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers. "

4] In view of the law laid down by the Supreme Court in the aforesaid matter, the grievance raised by the petitioner in the instant petition does not deserve consideration. The writ petition is devoid of substance and hence stands rejected.

(K.L. WADANE, J.)

(R.M. BORDE, J.)