

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

**WRIT PETITION NO. 6350 OF 2016
WITH
CIVIL APPLICATION NO. 10609 OF 2016**

Yeshwant Meghshyam Mahajan ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

**WITH
WRIT PETITION NO. 6120 OF 2016
WITH
CIVIL APPLICATION NO. 10610 OF 2016**

M/s Chakradhar Constructions ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mrs. C.R. Kutti Choudhary, Advocate for petitioner in WP 6350 of 2016.

Mr. S.M. Godsay, Advocate for petitioner in WP 6120 of 2016.

Mr. P.S. Patil, A.G.P. for respondents in both the petitions.

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**CORAM : R.M. BORDE AND
A.I.S. CHEEMA, JJ.
DATED : 27th JULY, 2016**

ORDER :

1. In both the petitions, the petitioners are the registered Government Contractors. The decisions recorded by the respondents, rejecting their technical bids during the tender process and holding them disqualified are under challenge in these petitions. Apart from failure of

the petitioner to fulfill the mandatory requirement of producing the proof of ownership or placement of the firm order in respect of purchase of reversible concrete mixture, the petitioners have been held ineligible on account of past poor performance.

2. The petitioners contend that the special condition incorporated in the tender documents shall have to be construed as directory and not mandatory. This argument is not acceptable for the reasons that as per Sub-clause 5 of Clause 1.6 of Section 4 mandate production of proof of ownership of the machinery or the proof relating to placement of firm order for acquisition of the property is required to be submitted at the time of tendering.

3. In the instant matter, the petitioners have failed to submit necessary details while uploading online tender. Apart from this, the petitioners' past performance is poor. It would be difficult to accept that the contentions raised by the petitioners based on the factual aspects. It is for the department to take a view in that regard. Even otherwise, the scope of interference in tender matters is quite limited and as laid down in the decision of the Supreme Court in the matter of **Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and Others** reported in **(1999) 1 SCC 492**. In the instant matters, 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 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 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 redoing 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 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 grievances raised by the petitioners in the instant petitions do not deserve consideration. The writ petitions are devoid of substance and hence stand rejected. Civil applications therein stand disposed of accordingly.

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

(R.M. BORDE, J.)

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