

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

WRIT PETITION NO. 6341 OF 2016

RAJHANS CONSTRUCTION, THROUGH ITS PROPRIETOR

GULJAR S/O RATANSING GIRASE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for the petitioner : Mr. P. B. Patil
AGP for the Respondents-State: Mr. V. M. Kangne
Advocate for respondent No.3: Mr. D. P. Palodkar

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

DATE : 17th June, 2016

ORDER:

1. Heard learned counsel for the parties.
2. The petitioner is objecting to the action of the respondents in accepting the tender offer of respondent no.3 by communication dated 05.06.2016. The petitioner submits that respondent No.3 is not eligible for consideration of allotment of tender work since he does not fulfill the requirements laid down under the tender notice, more particularly Clause (d) of Paragraph 7 as well Clause No.10 of Paragraph 8-B(a).
3. The petitioner contends that Appendix- A, details of work of similar type and magnitude carried out by the tenderer furnished by the successful

bidders together with tender documents, does not bear the signature of the issuing authorities/Sub Divisional Agricultural Officer, Amalner. It is further pointed out that several documents annexed to the tender do not bear even the signatures of respondent No.3. So far as the financial bid is concerned, on consideration of the financial bid evaluation, the petitioner is ranked L-1, whereas the successful bidder is L-4, who has quoted lowest rate. Since the tender relates to execution of the work, the lowest quoted rate is the criteria for evaluation of the financial bid. It is informed that successful bidder has quoted 23.66% rates below the tender rate, whereas the petitioner has quoted only 9.9% rates below the tender rate. on consideration of the evaluation of financial bid list, we are satisfied that there is no loss to the public exchequer.

4. The petitioner has failed to point out that the action is tainted with any *malafides*. So far as the objections as regards failure of the successful bidder i.e. respondent no.3 to sign Appendix- A is concerned, the learned counsel appearing for the respondent pointed out clause 4 of Para 8-B(a), which contains that details of work of similar nature and magnitude carried out by the contractor shall be furnished. It is

submitted that the statement at Appendix- A is of the details of similar work and it need not necessarily be signed by any official. The other objections, which are not of substantial character, need not be considered.

5. A reference can be made to the judgment in the matter of **Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd.**, reported in (2005) 6 SCC 138. In paragraph No. 15 (page 148) of the said Judgment, the Supreme Court has observed thus:

"15. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. vs. Cochin International Airport Ltd.* and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bonafide reasons, if the tender conditions permit such a relaxation. It is further held that the State, is corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found

in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

6. It must be noted that the award of contract by the State or by a private party is essentially a commercial transaction and the State has freedom to choose its own method and arrive at decision and it is free to grant relaxation for bonafide reasons, if the tender conditions permit such relaxation. The Supreme Court has further observed in the aforesaid judgment that even if some defects are found in the decision-making process, the court must exercise extraordinary powers which it may deem fit and unless public interest necessitates causing of such interference.

7. A reference can also be made to the judgment in the matter of **Raunaq International Ltd. Vs. I.v.R. Construction Ltd. And others, reported in (1999) 1 Supreme Court Cases 492**, wherein the Supreme Court has observed that the financial consideration or the loss of exchequer is the important determining criteria and unless it is demonstrated that the actions objected are likely to sacrifice the public interest or the public finance, the court need not step in.

8. Apart from this, it has been demonstrated that the tender work awarded to the successful bidder is in respect of deepening of Nalla. The amount of tender work quoted in the tender notice is Rs.36,65,509/-. The work is required to be completed before 30.06.2016 since the rainy season is fast approaching. Considering the nature of work, we do not propose to cause interference in the matter. Writ petition is devoid of substance and hence the same stands dismissed. No costs.

(K. L. WADANE, J.)

(R. M. BORDE, J.)

JPC