

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

WRIT PETITION NO. 8876 OF 2015

M/s Maruti Roadways through its
Partner Yogesh Shankarrao Wattamwar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 8877 OF 2015**

M/s Maruti Roadways through its
Partner Yogesh Shankarrao Wattamwar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Sapkal, Advocate h/f Shri D. M. Shinde, Advocate for
the Petitioner in both matters.

Shri V. H. Dighe, A.G.P. for Respondent Nos. 1 to 3 in both
matters.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 02ND FEBRUARY, 2016.

PER COURT :

. The petitioner assails the condition No. 5(3) incorporated in
the letter of acceptance of tender dated 26.06.2015 on the ground
that same was not a condition in tender itself.

2. Mr. Sapkal, the learned counsel for the petitioner submits that, pursuant to the tender notice floated by the respondent No. 2 in the month of April 2015 for transportation routes at various places, the petitioner had filled in the tenders. As per the terms and conditions in the tender notice, price bid was invited commensurate with the kilometer. The petitioner had filled in the tenders and the petitioner was successful bidder. The petitioner was issued letter of acceptance of tender dated 26.06.2015. It was specifically stated in the said letter of acceptance that, the rates specified in the schedule attached to the said letter is accepted as per the Statement - A. Along with the said letter the rate payable was Rs. 22.50 paise per K.M. in Writ Petition No. 8876 of 2015 and Rs. 23.40 paise per K.M. in Writ Petition No. 8877 of 2015. The learned counsel submits that, condition No. 5(3) in the acceptance of tender is not in consonance with the condition of tender. The respondents do not have any authority to impose the condition which is not a part of the tender. Even Government Resolution referred to is not applicable for such contract.

3. Mr. Dighe, the learned Assistant Government Pleader submits that, said condition is in consonance with the Government Resolution dated 26.08.2010 and also the Government Resolution issued subsequently dated 21.11.2013. According to the learned A. G. P. the said condition is not a new

condition. Even when the earlier tenders were issued and the work orders were given pursuant to earlier tenders, the said clause was also there. The petitioner was allotted the tender for previous years and it had accepted the said condition. According to the learned A. G. P. the said Government Resolution holds the field and petitioner now cannot turn around and contend otherwise. According to the learned A. G. P. the said condition is reasonable and is applicable to all. No new conditions are being put forth.

4. We have considered the submissions canvassed by the learned counsel for respective parties. The tender document is placed on record. Perusal of the tender document, it nowhere transpires that the condition No. 5(3) as laid down in the letter of acceptance of tender that is, "transportation of milk procurement route will be paid by the scheme incharge to the contractor in the limit of Rs. 2.60 paise per liter as per Government Resolution dated 26.08.2010." The persons have filled in the tender considering the terms and conditions as laid down in the said tender notice. The offer of petitioner was accepted as per the tender notice. The condition as referred to supra and assailed in the present writ petitions was alien to the tender document. The respondent is instrumentality of the State as such is expected to act as a model litigant. The respondents would have been justified in incorporating said condition in the letter of

acceptance of tender, had the said condition been a part of the terms and condition of the tender and the tender documents and it's term not been challenged. However, the said term not being a condition in the tender document and is totally alien to the same could not have been incorporated subsequently. Incorporating said term would be beyond the scope of the tender.

5. If it would have been case between private parties, certainly this Court would not have interfered with the impugned order, but the respondents being instrumentality of the State ought to have acted fairly.

6. In the light of the above, the said term in clause No. 5(3) of the document dated 26.06.2015 (Exhibit E) being beyond the scope of the tender is set aside.

7. It is stated that, though the agreement is not entered between the parties, the petitioner is allowed to proceed ahead with the work and since three years the petitioner is doing the said work.

8. The period of the tender is upto 31st March, 2016. Considering the fact that, major period as envisaged in the tender is already over, no further orders are required to be passed.

9. It is made clear that, we have decided these petitions only on the ground that, said clause was not incorporated in the tender document. The writ petitions accordingly are allowed in above terms. No costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Feb. 16