

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

WRIT PETITION NO.12080 OF 2016

Anil s/o. Barsu Bhole,
Age : 50 years,
Occ. Govt. Contractor,
R/o. 11, Ganeshwadi,
Zilla Peth, Jalgaon ..Petitioner

Vs.

The State of Maharashtra,
Through its Secretary,
Agriculture and Water
Resources Department,
Mantralaya, Mumbai
and ors. ..Respondents

AND

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Mr.V.B.Patil, Advocate for petitioner in both petitions

Mr.M.M.Nerlikar and Mr.S.J.Salgare, AGPs for respondent nos.1 to 4 in both petitions

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**CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.
DATE : DECEMBER 06, 2016**

PER COURT :

Heard.

2. The petitioner is raising objection to acceptance of the tender of respondent no.5 contending that respondent no.5 has not adhered to the tender condition no.13, which requires the tenderer to put digital signature on each page of the tender documents.

3. The date for opening of the tender was prescribed as 13.10.2016 and the period for completion of work was prescribed as ninety days. In all probabilities, the successful bidder must have been issued the work order and he must have commenced the work in pursuance thereto. At this

stage, therefore, no interference need be caused in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. Apart from this, the petitioner is not in a position to demonstrate loss to the revenue or wastage of public finance, as a result of acceptance of the bid of respondent no.5. Reliance can be placed on the judgment of the Supreme Court in the matter of **Raunaq International Ltd Vs. I.V.R. Construction Ltd., reported in (1999) 1 SCC 492.** In paragraphs 9, 10 and 11 of the judgment, it is record thus:

"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 fulfill 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 fulfillment 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 of 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 for 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 reasons set at above, no interference is called for. The Writ Petition is devoid of substance and hence, stands rejected.

[SANGITRAO S. PATIL, J.]

[R.M. BORDE, J.]