IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12582 OF 2015

Pravin Nagnath Paldewar,
Government Contractor,
Through its Proprietor,
Shri Pravin S/o Nagnath Paldewar .. Petitioner

Versus

The Chairman and Managing Director,
Maharashtra State Warehousing Corporation,
583/B, Gultekdi, Market Yard,
Pune - 411037 .. Respondent

Shri Sushant C. Yeramwar, Advocate for the Petitioner.
Shri N. B. Surywanshi, Advocate for the Respondent/Sole.

WITH
WRIT PETITION NO. 12359 OF 2015

Jai Mata Di Malvahtuk Co-operative
Sanstha Maryadit, Jalgaon,
Through its Secretary .. Petitioner

Versus

1. The Maharashtra State Warehousing
Corporation, Market Yard, Gultekadi, Pune,
Through its Chairman and
Managing Director and another .. Respondents

Smt. Chaitali R. Kutti Choudhari, Advocate for the Petitioner.
Shri N. B. Surywanshi, Advocate for Respondent Nos. 1 and 2.

CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.
DATE : 02ND FEBRUARY, 2016.

PER COURT :

. Vide the present writ petitions, the petitioners are assailing the terms and conditions laid down in the tender notice.

2. Mr. Yeramwar and Mrs. Kutti, the learned counsel for the respective petitioners have taken us through the terms and conditions of the tender. The learned counsel submit that, the terms and conditions of the tender are arbitrary and they are incorporated in such a manner so as to dissuade the competition and by virtue of which large number of persons would be deprived from competing in the said tender. According to the learned counsel, term No. 3 lays down that the person applying for the tender should have the turnover of at least 25% of the tender amount in any preceding three years. The same is not warranted. The condition No. 9 of the tender requires submission of solvency certificate to the extent of 10% of any Scheduled Bank so also Bank guarantee is to be issued to the extent of 5% by way of security deposit. All these terms and conditions are enumerated so as to exclude competition and only allot contract to the favourable persons. The learned counsel submit that, in addition to that as per clause 11 additional deposit is to be given. The amount in respect of the same is not

quantified. Such a clause is onerous one and does not stand to any reason. The learned counsel further submit that, the purpose of the tender is to find the most competitive bidder and that is only possible if larger number of tenderers participate in the tender process. According to the learned counsel, such clauses which would dissuade competition, cannot be allowed to stand and such clauses in the tender deserved to be struck down, inter alia, the process of the tender initiated by respondents be quashed and set aside. The learned counsel relies on the judgment of the Division Bench of this Court in Writ Petition No. 4911 of 2006 dated 04th April, 2007. The learned counsel submits that, in said judgment similar clauses were held to be unreasonable and arbitrary. The learned counsel further submits that, even if the rates are seen which are being accepted, the rates as fixed by the Mathadi Board in respect of payment being made to the Mathadi workers is less than what has been quoted in the tender. According to the learned counsel there is no rational in the same.

3. Mr. Suryawanshi, the learned counsel for respondents submits that, the terms and conditions are in confirmation with the Food Corporation of India terms. The respondents can impose additional terms and conditions. The turnover to the extent of 25% of the tender amount is reasonable and the said turnover has to be for any one year in the preceding three years.

The same is to inspire the confidence, the security deposit and the solvency certificate are taken and they are as per the norms of the Food Corporation of India. No additional deposit is required to be paid by the tenderer as per clause 11 as contended by the petitioners. The amount of security deposit and the Bank is notified vide Appendix - C of the tender and that is the only security and solvency to be submitted. According to the learned counsel, the amount is to be paid to the workers. There are various factors to be considered. The Schedule of Rate (SOR) as incorporated in the tender form contains the basic rate for loading, unloading, transportation, unloading in the godowns and delivery from the godowns. For different locations separate SOR is mentioned for transportation. However, the same is clubbed in one tender form only. Since May 2015 the revised SORs are revised by the Food Corporation of India. The position of the Railway goods infrastructure also affects the rates quoted by the tenderer. It also contain the clause that any rate hike in diesel, labour charges by Mathadi Board and levy charges will be borne by the contractors and no hike accordingly will be paid by the respondents. The learned counsel submits that, since 2009, E-tender process is being followed and petitioners are also one who have been allotted the tenders and they are also doing the work of the respondent, as such they are aware of the terms. According to the learned counsel the scope for judicial review in such matters is in a limited compass. The learned counsel relies on the judgment of Apex Court in a case of **M/s. Michigan Rubber (India) Ltd. V/s. State of Karnataka and Others** reported in ***AIR 2012 S. C. 2915*.**

4. We have considered the submissions canvassed by the learned counsel for the respective parties. There can not be any dispute with the proposition that the Court would exercise the powers of judicial review in matters with regard to the grant of contract, fixation of value of tender, formulation of tender condition, etc. only if it is shown that they are arbitrary and unreasonable.

5. One of the reason for challenge is about the condition of annual turn over of at least 25% of the tender amount for any one year in preceding three year. The said term cannot be said to be arbitrary. The said criteria is fixed by the experts with a view to inspire confidence in the tenderer. The amount of tender is Rs. 25,00,00,000/-. In a case of **M/s. Michigan Rubber (India) Ltd. V/s. State of Karnataka and others** referred supra, the clause of minimum average annual turn over in preceding three years was assailed. The Apex Court rejected the said challenge. In the present case also the said condition would be necessary to inspire confidence of the department in respect of the capacity of persons filing in the tender and that they would be in a position to successfully perform their part of the contract,

if work order is issued to them. The said condition does not seem to be unreasonable.

6. As far as the conditions of solvency, security deposit and Bank guarantee are concerned, the same are necessary conditions in almost all tenders of such volume. They cannot be said to be unreasonable. The persons applying for tender should have the financial stability and some security has to be with the principal to enforce its right in case default is committed by the contractor. We do not find any illegality in the same. Explanation is given about the rates of the Mathadi workers and it is also made clear that vide clause 11 no separate amount is to be paid by the tenderer, the same in a way clarifies the payment of security deposit and other aspects.

7. As held by the Apex Court in a case of **M/s. Michigan Rubber (India) Ltd. V/s. State of Karnataka and Others** referred supra, The undertaking must have free hand in such terms of tender and only, if if is arbitrary, malicious and a misuse of statutory powers, the Court would interfere. It is held by the Apex Court that the Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that the some other terms in the tender would have been fair, wiser and logical.

8. Considering the aforesaid aspects, we do not find that the terms in the tender can be said to be unreasonable and arbitrary. It is submitted that already 10 tenders are received as such it is not a case that because of the said terms the parties have not filled in the tender.

10. Considering the above, no relief can be granted to the petitioners. The writ petitions accordingly are dismissed of. No costs.

[A. M. BADAR, J.] **[S. V. GANGAPURWALA, J.]**

bsb/Feb. 16