

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1610 OF 2016

KWALITY AGRO-VET INDUSTRIES

..Petitioners

Vs.

The State of Maharashtra

..Respondent

WITH

CIVIL APPLICATION NO.647 OF 2016

IN

WRIT PETITION NO.1610 OF 2016

Kamdhenu Feeds

..Applicant

In the matter between

KWALITY AGRO-VET INDUSTRIES

..Petitioners

Vs.

The State of Maharashtra

..Respondent

WITH

CIVIL APPLICATION NO.648 OF 2016

IN

WRIT PETITION NO.1610 OF 2016

Shakti Livestock Feeds Pvt Ltd

..Applicant

In the matter between

KWALITY AGRO-VET INDUSTRIES

..Petitioners

Vs.

The State of Maharashtra

..Respondent

Mr. Atul Damle, Senior Counsel a/w Mr. Sachin Gite, for the
Petitioners.

Mr. P. G. Sawant, AGP, for the Respondent State.

Mr. Nirman Sharma a/w Ms. Uma Sharma and Dharam Sharma
i/b Dharam and Co, for the Applicant in both Civil Applications

**CORAM :- V. M. KANADE, J. &
B. P. COLABAWALLA, J.**

DATE :- MARCH 10, 2016.

JUDGMENT :- [Per B. P. Colabawalla, J.]

1. By this Petition under Articles 226 and 227 of the Constitution of India the Petitioner has challenged the rejection of their bid by the Respondent's Technical Scrutiny Committee Report dated 1st February, 2016. The tender / bid of the Petitioner was for supply of Mineral Mixture Type II (IS 1664:2002) without salt to the Veterinary Institute.

2. The brief facts giving rise to the present controversy are that the Respondent had invited tenders in the prescribed format for supply of Mineral Mixture Type II (IS 1664:2002) without salt to the Veterinary Institute. This tender was published on 30th December, 2015 and a detailed e-tender notice was made

available on the e-tender portal of the Department of Animal Husbandry. The tender / bid submissions were to take place between 30th December, 2015 and 22nd January, 2016. It is the case of the Petitioner that as per the tender notice, they submitted their on-line tender on 21st January, 2016 along with all the technical documents including a valid certification of Marks Licence issued by the Bureau of Indian Standard (BIS) for Mineral Mixture Type II (IS 1664:2002).

3. On 23rd January, 2016 the Petitioners' bid was opened. According to the Petitioners, it had complied with all the terms and conditions as mentioned in the tender documents. It is in these circumstances that the Petitioners were surprised that on 3rd February, 2016 the Petitioner found out that their tender was rejected as per the Technical Scrutiny Committee Report dated 1st February, 2016. It is the case of the Petitioner that after making further enquiries, it came to know that its tender / bid was rejected on account of a spelling error in the name of the Petitioner in the Marks Licence certificate issued by the Bureau of Indian Standard as well as the certificate granted by the Directorate of Industries, Government of Tamil Nadu. It is in these

circumstances that the Petitioner has approached this Court in its writ jurisdiction questioning the decision of the Respondent in rejecting their bid.

4. In this factual background, Mr. Damle, learned Senior Counsel appearing on behalf of the Petitioner submitted that the facts of the case would clearly reveal that there was merely a typographical error in the name of the Petitioner in the aforesaid certificates and in such circumstances the tender / bid of the Petitioner ought not to have been rejected on this specious ground. Mr. Damle submitted that the correct spelling of the name of the Petitioner is "*Kwality Agro-Vet Industries*" whereas the name appearing in the certificate granted by the Bureau of Indian Standard and also by the Directorate of Industries, Tamil Nadu was "*Kwality Agro-Wet Industries*". Mr. Damle would submit that this was a totally frivolous ground on which the tender / bid of the Petitioner was rejected, and therefore, required interference by us in our extra ordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India.

5. On the other hand, Mr. Sawant, learned AGP,

appearing on behalf of the Respondent, submitted that it is an admitted position that the certificates submitted by the Petitioner were in the wrong name. He submitted that the certificate of Marks Licence CM/L No.6507165 issued by the Bureau of Indian Standard was in the name of “*Kwality Agro-Wet Industries*” and not in the name of the tenderer “*Kwality Agro-Vet Industries*”. He stated that the certificate of Marks Licence CM/L No.6122448 was also issued by the Bureau of Indian Standard to “*Kwality Agro-Vet Industries*” which expired in the year 2004. He, therefore, submitted that this was not a case of a simple typographical mistake as sought to be made out by the Petitioners. In any event, he submitted that the Respondent Authorities cannot be faulted for rejecting the tender of the Petitioner if defective certificates had been submitted. In this regard, he also relied upon the decision of the Supreme Court in the case of ***Glodyne Technoserve Limited v/s State of Madhya Pradesh and Others***¹ and more particularly paragraphs 8, 46 and 47 thereof.

6. Mr. Sawant additionally submitted that in any event the samples submitted by the Petitioner were not as per the Bureau of Indian Standard and it was on this ground also that the

1 (2011) 5 SCC 103

tender / bid of the Petitioner was rejected and his commercial bid was not opened. He submitted that this fact is undisputed by the Petitioner. For all the aforesaid reasons, Mr. Sawant sought to justify the rejection of the Petitioner's bid and submitted that the Writ Petition be dismissed with costs.

7. With the help of the learned counsel, we have carefully perused the papers and proceedings of the present Writ Petition along with the Annexures thereto. On a careful consideration of the material on record we find considerable force in the argument of the learned AGP. It is not in dispute that the certificates that were submitted by the Petitioner were in the wrong name. We are unable to accept the submissions of Mr. Damle that this mistake ought to be overlooked in view of the fact that it is merely a typographical mistake. It is pertinent to note that the Marks Licence certificate submitted by the Petitioner was allegedly in the wrong name as far back as from 5th May, 2010. The Petitioner did absolutely nothing to have name corrected. Looking to the conduct of the Petitioner in this case we cannot find any fault with the actions of the Respondent in rejecting the Petitioner's bid on the ground that the Marks Licence certificate submitted by the

Petitioner was not in its name. In this regard, it would apposite to refer to the judgment of the Supreme Court in the case of **Glodyne Technoserve Limited (supra)**. The issue before the Supreme Court (as set out in paragraph 8 thereof) was whether the Appellant therein was disqualified from consideration in view of the fact that the Appellant, due to inadvertence or otherwise, had filed a copy of the ISO 9001:2000 certificate of the previous year, instead of the current year. This was despite the fact that it had a valid ISO 9001:2000 certificate at the time of making the bid. After elaborately setting out the facts and arguments of the parties, the Supreme Court in paragraphs 46 and 47 held thus:-

“46. The above provision obliges a tenderer to produce along with the bid document a copy of the quality certificate which is valid and active on the date of submission of the bid and it does not enable a bidder to withhold the copy of such quality certificate. Where the quality certificate will be expiring shortly and is due for renewal, the bidder is also obliged to produce the renewed certificate at the time of signing of the contract. The appellant claimed to have a valid and active ISO 9001:2000 certificate at the time of submission of the bid, but did not produce a copy of the said certificate along with the bid document.

47. The submissions made on behalf of the appellant proceeds on the basis that it was entitled, almost as a matter of right, not to submit the documents required to be submitted along with the bid documents on the supposition that, even if such documents were valid and active, they could be submitted at the time of signing of the memorandum of understanding. The appellant had a valid and active ISO 9001:2000 certification which it did not submit along with the bid documents, may be due to inadvertence, but

whether such explanation was to be accepted or not lay within the discretionary powers of the authority inviting the bids. The decision taken to reject the technical bid of the appellant cannot be said to be perverse or arbitrary. We need not refer to the decisions cited by the learned Attorney General or the appellant in this regard, as the principles enunciated therein are well established.”

(emphasis supplied)

8. As can be seen from the aforesaid decision, even after the wrong certificate was submitted along with the bid documents due to inadvertence, whether such an explanation was to be accepted or not lay within the discretionary powers of the authority inviting the bids. We find that even in the facts of the present case admittedly the Marks Licence certificate that was submitted by the Petitioner was in the wrong name. This was sought to be explained by the Petitioner by contending that this was merely a typographical error. As held by the Supreme Court, whether such explanation was to be accepted or not lay within the discretionary power of the authority inviting the bids. In the facts of the present case, we do not think that the decision taken to reject the bid of the Petitioner can be said to be perverse or arbitrary which would require our interference in writ jurisdiction. This is more so in the facts of the present case considering the fact that the Petitioner never took any steps from

2010 onwards to have the alleged mistake corrected. We, therefore, are unable to accept the submissions of Mr. Damle in this regard.

9. Even otherwise, we find that the Respondent in its affidavit in reply has elaborately set out that the samples submitted by the Petitioner (a requirement under the tender conditions) did not comply with the Bureau of Indian Standard. It is specifically stated in the said affidavit that as per Condition No.4 of the tender, the Petitioner was required to submit samples of Mineral Mixture Type-II (IS 1664:2002). The Petitioner submitted the samples on 20th January, 2016 in packets of 1 kg and 5 kg respectively. When these samples were examined, it came to the notice of the Respondent authorities that the samples had two different compositions. On the composition of the 1 kg sample, it is mentioned as "*YEAST PERCENT BY MASS, MIN : 5*". It is not in dispute that this is not as per the Bureau of Indian Standard. It is further stated in the affidavit that surprisingly even though the 1 kg as well as the 5 kg samples submitted by the Petitioner were having two different compositions, there was only one test report submitted. It was therefore also on this ground

that the Petitioner's bid was rejected. Despite the fact that this affidavit was served on the Petitioner, the Petitioner has chosen not to controvert these facts stated in the affidavit-in-reply of the Respondents.

10. Looking to the totality of the facts of the present case, we do not think that the decision of the Respondent Authorities to reject the Petitioner's bid is in any event perverse and/or arbitrary that would require our interference under Article 226 and/or 227 of the Constitution of India. In the facts of the present case, we do not think that justice lies on the side of the Petitioner for us to exercise our extra ordinary, equitable and discretionary writ jurisdiction in favour of the Petitioners and strike down the decision of the Respondent Authorities rejecting the Petitioner's bid. In this view of the matter, we find no merit in the Writ Petition and it is accordingly dismissed. However, in the facts of the case we leave the parties to bear their own costs. In view of the fact that the Writ Petition is dismissed, nothing survives in the above Civil Applications and the same are also disposed off accordingly.

(B. P. COLABAWALLA, J.)

(V. M. KANADE, J.)