

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8054 OF 2016

M/s. Empire Industrial Equipment. ..Petitioner.

Versus

The Thane Municipal Corporation
and Others. ..Respondents.

Mr. K. S. Dewal i/b R. S. Tanna for the Petitioner.

Mr. R. S. Apte, Senior Advocate with N. R. Bubana for Respondent
No. 2.

Mr. A. Y. Sakhare, Senior Advocate with Mohan Tekawade and
Swati M. Tekawade for Respondent No. 3.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.

Date : **September 20, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the decision of Respondent No.1 to hold Respondent No.3 technically qualified in e-tender process for implementation of ESCO Project – design, supply, installation, testing, commissioning, including operation and maintenance of LED street lights.

2. The first Respondent invited e-tenders for the work of implementation of ESCO Project – design, supply, installation, testing, commissioning, including operation and maintenance of LED street light. In this project Respondent No.1 is assisted by

ICLEI – Local Government for Sustainability – South Asia in its transition towards low emission development through project “Developing Urban Low Emission Development Strategies in Emerging Economies” funded by European Union and is supported by UN-Habitat. E-tender was invited in two bids, namely, technical bid and financial bid.

. Only two bidders came forward, namely, the Petitioner and Respondent No.3. As per clause 20.2.1 of the e-tender, firstly technical documents of both, the Petitioner and Respondent No.3 were opened. In the technical bid, both were found to have cleared eligibility criteria. Therefore, both were invited for conducting field trials on A2 and B1 roads for verifying of illumination performance.

3. As per the tender documents, bidders were required to give mock trials about their concept. Accordingly, mock trials of the concepts of the Petitioner and Respondent No.3 were conducted on 18th June 2016. At that time the Petitioner, Respondent No.3 as well as the consultant were present. The consultant thereafter gave its report on 20th June 2016. The Consultant held that the bids of the Petitioner and Respondent No.3 have technically qualified. On the same day, i.e., on 20th June 2016, financial bids were opened and in that process, bid of Respondent No.3 was found to be the lowest. Therefore, tender was allotted to Respondent No.3.

4. Mr. Dewal, learned Counsel appearing for the Petitioner invited our attention to the document at page No.226 and submitted that Respondent No.3 had not technically qualified and therefore it [i.e., 3rd respondent] should not have been allowed to participate in the financial bid.

5. Mr. Apte and Mr. Sakhare, the learned Senior Counsel appearing for Respondent Nos.1 and 3 respectively on the contrary relied upon the Expert's report and submitted that Experts have found both, the Petitioner and Respondent No.3 to have technically qualified and therefore financial bids of both of them were opened in which Respondent No.3 was found to be the lowest one. They submitted that in this fact situation, this Court would not be justified in interfering with the tender process.

6. The Expert – Meghraj Capital Advice Private Limited was appointed by ICLEI, Local Governments for Sustainability, South Asia, an independent NGO of good repute, in consultation with Respondent No.1. The expert report shows the LUX measurement of the Petitioner as well as of Respondent No.3 to be “8” and therefore it was concluded that both have technically qualified and are eligible to participate in the financial bid.

7. So far as the document relied upon by Mr. Dewal,

learned Counsel appearing for the Petitioner is concerned, the same only contains the rough notes of the experts for the purpose of preparing the final expert report and much importance cannot be given to the same.

8. Be that as it may, when the financial bids were opened on 20th August 2016, the Petitioner was present. At that time, he was aware that Respondent No.3 has qualified the technical bid. Yet, the Petitioner did not take any objection to the opening of financial bid of Respondent No.3. After opening of the financial bid, the Petitioner did not take any objection for the period of one week and only on 28th June 2016 made grievance about the qualification of Respondent No.3 in technical bid.

9. Admittedly, in the light of objection raised by the Petitioner, Respondent No.1 appointed two independent experts and called upon the Petitioner to participate in the second mock trial. However, the Petitioner did not remain present. Therefore, the mock trial of the concept of Respondent No.3 was conducted and the newly appointed experts submitted their report on 22nd July 2016, copy of which is placed on record by Respondent No.1 with their affidavit-in-reply. In this report too, it is reported that LUX performance of Respondent No.3 is 8 and therefore Respondent No.3 qualifies in the technical bid to participate in the financial bid.

10. In the light of above facts and circumstances, we are not inclined to entertain this writ petition and interfere with the tender process in writ jurisdiction of this Court under Article 226 of the Constitution of India. Writ petition is, therefore, dismissed.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]