FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4225/2016
(BHARAT NATWARLAL PATEL **VERSUS** MAHARASHTRA STATE POWER GENERATION COMPANY LIMITED, MUMBAI & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri Y.D. Nagpure and Shri P.R. Puri, counsel for the petitioner.
Shri G.E. Moharir, counsel for the R-1 & 2.

CORAM : SMT.VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : AUGUST 01, 2016.

By this writ petition, the petitioner seeks a declaration that the respondent no.3 does not fulfill the eligibility criteria prescribed under E-Tender Notice No.32706, dated 07.06.2016, floated by the respondent no.1-Maharashtra State Power Generation Company Limited and the contract cannot be awarded to him.

The respondent no.1-Maharashtra Power Generation Company Limited had floated the tender on 07.06.2016, for maintenance of Ash Handling Plant of Unit Nos.3 and 4. The petitioner submitted the bid online along with the other bidders. Since the respondent no.1-Company decided to award the contract in favour of the respondent no.3, the petitioner has filed the instant petition seeking the aforesaid relief.

It was stated on behalf of the petitioner on the previous date of hearing that the respondent no.3 had not satisfied the condition of completing three similar works each costing not less than the amount equal to 40% of the estimated cost of tender. It was stated that since the estimated cost of the tender work was Rs.1,63,27,500/-, it was necessary for the respondent no.3 to have completed three similar works, each costing not less than the amount equal to 40% of the estimated cost; or two similar works each costing not less than the amount equal to 50% of the estimated cost; or one similar work costing not less than the amount equal to 80% of the estimated cost. In view of the aforesaid submission, this Court *prima-facie* found that the respondent no.3 must not have fulfilled the eligibility criteria as he had completed the work of similar nature, costing Rs.67,89,437/-, only.

The respondent nos.1 and 2 have filed the affidavit-in-reply in support of the action of awarding the contract in favour of the respondent no.3. It is stated that on the date on which this Court issued the notice, i.e. on 25.07.2016 and directed the parties to maintain *status quo* till the returnable date, the respondent no.1 had awarded the contract in favour of the respondent no.3. It is stated that the claim of the petitioner that the respondent no.3 does not fulfill the eligibility criteria, is not correct. It is stated that the petitioner is in the habit of filing writ petitions challenging the award of tenders in favour of other tenderers. The learned counsel for the respondent nos.1 and 2 has pointed out that the petitioner had earlier filed Writ Petition No.7223 of 2014, that was dismissed and had also filed Writ Petition No.6202 of 2015. It is stated that the claim of the petitioner that the respondent no.3 has not completed one work of similar nature, costing not less than the amount equal to 80% of the estimated cost, is not correct. The learned counsel has relied on the terms of the Qualifying Requirements as per the tender conditions and specially, the Note to Clause 3 of the Qualifying Requirements, that defines the works of similar nature and states the estimated cost for the qualifying requirement. It is stated, by pointing out the note to clause no.3 of the Qualifying Requirement of the tender conditions, that the estimated cost of Rs.81,63,763/- is considered as the qualifying requirement. It is stated that it is clear from Clause 3 of the Qualifying Requirements and specially the note appended thereto that a tenderer would be required to complete one work of similar nature, costing not less than the amount equal to 80% of the estimated cost. It is stated that since the note provides the estimated cost to be Rs.81,63,763/-, the petitioner cannot effectively challenge the award of the contract in favour of the respondent no.3 on the ground that the respondent no.3 did not complete one similar work, costing not less than the amount equal to 80% of the estimated cost as the respondent no.3 has completed the work for Mahagenco, the total value of which is Rs.67,89,437/-. It is stated that the amount of Rs.67,89,437/- would be more than 80% of the estimated cost of Rs.81,63,763/-.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the petition and the affidavit-in-reply, it appears that the petitioner has not made out any case for grant of the relief claimed. On a perusal of the tender conditions and the documents annexed by the petitioner to the writ petition, it appears that the respondent no.3 fulfills the eligibility criteria prescribed by the tender conditions, dated 07.06.2016. Though the estimated cost of the tender work is stated in the tender to be Rs.1,63,27,500/-, the tender conditions, specially the note appended to Clause 3 of the Qualifying Requirement makes it clear that the estimated cost of Rs.81,63,763/- should be considered as the qualifying requirement. Hence, it would be necessary for a tenderer to complete one work of the similar nature costing not less than the amount equal to 80% of the estimated cost, the estimated cost being Rs.81,63,763/-. Since the tender provides for a contract for two years, it appears that the note is appended to Clause 3 and the estimated cost is stated to be half of

Rs.1,63,27,500/-. The respondent no.3 has completed one work of a similar nature, the value of which is not less than the amount equal to 80% of the amount of Rs.81,63,763/- as the total value of the purchase order that he received from the Mahagenco towards the similar work that was carried out, is Rs.67,89,437/-. We do not find any force in the submission of the petitioner that the respondent no.1 should not have considered the total value of the contract awarded to the respondent no.3 by Mahagenco, as the amount of Rs.67,89,437/- would also include the amount towards Service Tax and while calculating the cost of the completed work, the service tax should be excluded. In fact, we find from the document annexed to the writ petition that service tax would be included in the total value of the contract. We had issued notice on 25.07.2016 only because the note appended to Clause 3 of the Qualifying Requirement was not pointed out to this Court and this Court was made to believe that the estimated cost of the tender work would be Rs.1,63,27,500/- and not Rs.81,63,763/-, as mentioned in the note to Clause 3, pertaining to the Qualifying Requirement. The respondent no.3 is admittedly the lowest bidder and the bid of the petitioner was higher than the respondent no.3. Since we do not find that the respondent no.3 did not meet the qualifying requirement, the writ petition is liable to be dismissed.

As such, we dismiss the same with no order as to costs.

JUDGE **JUDGE**

APTE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

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