IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4923/2016
(M/s Vaidehi-E-Link : Thr: Its Proprietor vs. The State of Maharashtra and others)

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

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Mr. M.I. Dhatrak, Advocate for the petitioner
Mr. I.J. Damle, Asst. Govt. Pleader for Respondent Nos.1 to 3
Mr. P.D.Meghe, Advocate for Respondent No.5
Mr.M.R.Johrapurkar, Advocate for Respondent No.6

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.
DATED : 19th December, 2016.

Heard.

By this Writ Petition, the petitioner seeks a declaration that the respondent no.5- M/s Dalal Electrical Appliances and respondent no.6 Shree Services, are not qualified to participate in the tender process. The petitioner seeks a direction against the respondent nos. 3 and 4 to accept the bid of the petitioner and award the contract to the petitioner.

An e-tender was floated by the respondent nos.1 to 3 for the work of providing arrangement for electrical supply to the Regional Forensic Science Laboratory at Amravati. In pursuance of the said tender, the petitioner as well as the respondent no.6 submitted their bids on 13.5.2016, whereas the respondent no.5 submitted its bid on 11.5.2016. According to the petitioner, though the respondent nos.5 and 6 were not qualified for participating in the tender process, their tenders were wrongfully considered by the respondent nos.1 to 3, to be eligible.

Though initially the petitioner had sought a declaration that the respondent no.6 was not eligible to participate in the tender since the work order is issued in favour of the respondent no.5, the petitioner restricts the challenge only to the eligibility of the respondent no.5 to participate in the tender.

Shri Dhatrak, the learned counsel for the petitioner submitted that the respondent no.5 was not eligible for participating in the tender process, inasmuch as the respondent no.5 did not possess a valid certificate as a licensed electrical contractor, on the date on which it had applied, in pursuance of the tender. It is stated that since the respondent no.5 did not possess a valid certificate as a licensed electrical contractor as per clause 1.4.4 of the tender, the respondent nos.1 to 3 ought to have rejected the tender of the respondent no.5. It is stated that the respondent no.5 did not possess the valid VAT (value added tax) registration certificate with upto date clearance as required by Clause 1.4.3 of the tender. It is stated that the details of the technical person as per clause 1.4.8 of the tender were not verified from a Muster Roll endorsed by the Licensing Board, that was valid up-to May 2016. It is submitted that the respondent no.5 did not possess the professional tax certificate with up-to-date clearance, in terms of Clause 1.4.11 of the tender as the professional tax certificate of the petitioner was valid till 31.3.2016. It is stated that the service tax registration certificate along with latest challan copy was not tendered by the respondent no.5 as per clause 1.4.14

of the tender. It is stated that the respondent no.5 had produced the clearance certificate that showed that the dues were cleared till September, 2015. It is stated that as per the tender condition a tender was liable to be invalidated, if any of the aforesaid documents were not attached to the tender. It is stated that the petitioner had tendered all the required documents to the respondent nos.1 to 3 and hence it was necessary for the respondent nos.1 to 3 to have awarded the work order in favour of the petitioner.

Shri Damle, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 to 3 and the learned counsel for the respondent no.5 have supported the action on the part of the respondent nos.1 to 3 of issuing the work order in favour of the respondent no.5. It is stated that the electrical license of the petitioner, as required by Condition No.1.4.4 was valid till 28.8.2006, whereas the respondent no.5 had a valid license till 2.3.2016 and the respondent no.5 had produced the proof of having applied for the renewal of the license before the expiry of the license and had produced the renewed license in May 2016 that had a validity period till 2019. It is submitted that the respondent no.5 had secured the VAT clearance certificate showing that there were no dues payable by the respondent no.5 upto 31.3.2016. It is stated that complete details of the Technical person as per the Muster Roll that was endorsed by the Licensing Board was submitted by the petitioner as well as the respondent no.5. It is stated that the service tax registration certificate of the petitioner pertains to the year 2015-16 and the respondent no.5 had also produced the service tax registration certificate that showed that the challan was submitted for the year 2015-16. It is submitted that the petitioner as well as the respondent no.5 were eligible bidders and since the bid of the respondent no.5 was the lowest, the same was accepted and the work order was issued in favour of the respondent no.5.

On a perusal to the documents that are annexed to the petition and the affidavit-in-reply filed on behalf of the respondent nos.1 to 3 and the respondent no.5, it appears that there is no merit in the submissions made on behalf of the petitioner that the respondent no.5 was not an eligible bidder. The respondent no.5 had tendered a scanned copy of the certificate as a licensed electrical contractor that was valid till 3.3.2016, with proof of having made a renewal application on 2.3.2016. The license of the respondent no.5 was renewed till 2019, by the renewal order issued in favour of the respondent no. 5, in May 2016. It, therefore, cannot be said that the respondent no. 5 did not possess a valid license as an electrical contractor, in terms of clause 1.4.4 of the tender document. The respondent no.5 had also tendered a scanned copy of the VAT clearance certificate issued by the Maharashtra Sales Tax Department, showing that there were 'no dues' as on 31.3.2016. Since the tender was floated in the month of April and the parties applied in pursuance of the tender in the month of May, the VAT clearance certificate upto 31.3.2016 would only be expected. That would mean up to date clearance. It would not be expected of a tenderer to submit the VAT clearance certificate showing that there were no dues on the date on which it applied in pursuance of the tender. Even the petitioner had not tendered the VAT clearance certificate showing that there were no dues till 13.5.2016, when the petitioner applied in pursuance of the tender. Taking a reasonable view of the matter, the respondent nos.1 to 3 rightly expected that the VAT clearance certificate should show there were no dues as on 31.3.2016. It further appears that the respondent no.5 had paid the professional tax till 31.3.2016 and it, therefore, cannot be said that the respondent no.5 had not cleared the professional tax dues. It appears that the details of the Technical person as required by clause 1.4.8 was supplied by the petitioner as well as the respondent no.5 on the basis of the Muster Roll that was endorsed by the Licensing Board. We find that the details of the Technical person are supplied by the respondent no.5 on the basis of the Muster Roll, maintained till 2.3.2016. The respondent nos.1 to 3 rightly held that there was compliance of Condition No.1.4.8 of the tender by the respondent no.5. We do not find from the documents available on record that the respondent no.5 was not an eligible bidder and that the respondent nos. 1 to 3 had committed an error in accepting his bid. The respondent no.5 was the lowest bidder and since the bid of the petitioner was higher than the respondent no.5, it appears that the respondent nos.1 to 3 accepted the bid of the respondent no.5 and issued the work order in its favour. We do not find any illegality with the action on the part of the respondent nos. 1 to 3, so as to interfere with the same in exercise of the writ jurisdiction.

In the result, the Writ Petition fails and is dismissed, with no order as to costs.

JUDGE **JUDGE**

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