

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5642 OF 2016

[M/s. SOM ELECTRICALS, NAGPUR .vs. State of Maharashtra and others]

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

Court's or Judge's orders

Shri V.N. Morande, counsel for the petitioner,
Shri A.M. Balpande, AGP for respondent nos.1 to 3,
Shri D.M. Kale, counsel for respondent no.4,
Shri Harish Dangre, counsel for respondent no.5,
Shri B.A. Kale, counsel for respondent no.6,
Ms. Pallavi Khaprikar, counsel for respondent no.7.

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

DATED : NOVEMBER 30, 2016.

By this writ petition, the petitioner seeks a direction against the respondent no.4-Municipal Council, Yavatmal to consider the financial bid of the petitioner along with the bid of the eligible participants. In the alternative, the petitioner challenges the tender process initiated in pursuance of the tender notice, dated 11.4.2016 published by the Municipal Council, Yavatmal.

A tender was floated by the respondent no.4-Municipal Council, Yavatmal on 11.4.2016 inviting tenders for erection of high-mast poles in Yavatmal. The estimate-cost of the work was Rs.2,61,56,810/-. According to the petitioner, the petitioner and the respondent nos.5, 6 and 7 participated in the tender process. It is stated that though the respondent nos.6 and 7 did not fulfill the eligibility criteria, their financial bids were opened and the bid of the respondent no.5 was accepted by the respondent no.4-Municipal Council. It is stated that the rate quoted by the respondent no.7 was 3.8% more than the estimated cost and the rate quoted by the respondent no.6 was 4.5% more than the

estimated cost. It is stated that the respondent no.5 had quoted a rate which was 0.96% below the estimated cost. It is stated that the respondent nos.5, 6 and 7 had submitted an affidavit that was sworn before the same Notary and this showed that a cartel was formed by the respondent nos.5 to 7. It is stated that the technical bid of the petitioner was wrongly rejected on the ground that the petitioner did not possess the requisite experience and the petitioner had not tendered an undertaking in regard to the maintenance. It is stated that the technical bid of the petitioner was rejected also on the ground that there was no authorisation by an authorised supplier in favour of the petitioner, as the authorised supplier had denied the issuance of the authorisation in favour of the petitioner. According to the petitioner, though as per the tender conditions, the financial bid could have been opened only two days after the opening of the technical bid, the Municipal Council opened the financial bid within a few minutes from the opening of the technical bid.

Shri Kale, the learned counsel for the Municipal Council, opposed the prayer made in the writ petition. It is stated that the petitioner was not eligible for participation in the bid, as the petitioner did not have the requisite experience of erection of high-mast poles. It is stated that this fact could be demonstrated by the letter addressed by the petitioner to the Municipal Council even before its participation in the tender. It is stated that the tender notice did not provide that the financial bid would be opened after two days from the opening of the technical bid. It is stated that the respondent nos.5, 6 and 7 were qualified tenderers and since the bid of the respondent no.5 was lowest, the Municipal Council accepted the said bid. It is stated that even the authorisation letter tendered by the petitioner was false, inasmuch as, as the authorised supplier had communicated to the Municipal Council that it had not issued any authorisation letter

in favour of the petitioner.

Shri Dangre, the learned counsel for the respondent no.5, submitted that the work order was issued in favour of the respondent no.5 on 12.9.2016 and almost 25% of the work was completed before passing of the interim order. It is stated that it is not the case of the petitioner that the respondent no.5 is not an eligible tenderer and hence the petition is liable to be dismissed.

The learned counsel for the respondent nos.6 and 7 had nothing much to say in the matter of allotment of contract to the respondent no.5, but they disputed the claim of the petitioner that they were not qualified tenderers.

It appears, after hearing the learned counsel for the parties, that the petitioner is not entitled to challenge the tender process, inasmuch as the petitioner was not eligible for participating in the tender process. The petitioner does not have the requisite experience of erection of high-mast poles and this fact is conveyed by the petitioner to the Municipal Council, even before its participated in the tender process. Also, though the petitioner has disputed, the authorised supplier has conveyed to the respondent no.4-Municipal Council that it has never issued any authorisation letter in favour of the petitioner. Since the petitioner admittedly did not possess the requisite experience for participation in the tender process, the petitioner cannot effectively challenge the issuance of the work order in favour of the respondent no.5. It is not the case of the petitioner that the respondent no.5 is not eligible for participation in the tender process. If the respondent no.5 had fulfilled the eligibility criteria and was eligible for participation in the tender process, the petitioner, who was admittedly ineligible for participation, could not have challenged the issuance of the work order in favour of the respondent no.5. We do not find from the material on record that the respondent nos.6 and 7 were not entitled to

participate in the tender process. Also, there is nothing in the tender notice to show that it was necessary for the Municipal Council to wait for two days before opening the financial bid after the technical bid was opened. The submission made on behalf of the petitioner that it was necessary for the Municipal Council to wait for two days for opening the financial bid after the technical bid was opened is, therefore, liable to be rejected. We do not find that the respondent nos.5 to 7 had joined hands so as to ensure that the respondent no.5 should be awarded the contract, merely because the affidavits tendered by the respondents were sworn before the same Notary.

Since the petitioner was not eligible for participating in the tender process and since the respondent no.5 was the lowest bidder and qualified to participate, the petition is liable to be dismissed. Hence, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE