

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION (wp) No. 6298 OF 2015

M/s D.R. Construction, Nagpur

v.

Maharashtra State Power Generation Co. Ltd. & anr.

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

Courts's or Judge's orders

**Coram : B.P .Dharmadhikari and
V.M.Deshpande, JJ.**

Date : 09th FEBRUARY, 2016.

Matter was heard by us on 14.1.2016 and then adjourned to enable the parties to point out certain aspects to the Court. Thereafter the matter has been heard today.

Petitioner, a proprietary firm in execution of various Government contracts, challenges the action of respondent no. 1 in opening price bid submitted by respondent no. 2 on the ground that respondent no. 2 does not have necessary experience of providing labours for electrical works or control and instrumentation work at Thermal Power Station. Contention is, at the most, respondent no. 2 may possess some experience of such work at a Sub-station. It is pointed out that tenders are invited for providing services at 500 MW Thermal Power Station while documents placed on record by respondent no. 2 show that

he has experience in relation to 11 KV Sub-station. According to Advocate Mirza, this experience is qualitatively different and also does not qualify as an experience of "similar work" as per qualifying requirements accompanying the tender notice. He has taken us through relevant documents to point out the experience possessed by respondent no. 2. He has further urged that the technical bids were opened on 01.9.2015 and as respondent no. 2 did not furnish necessary documents to show his eligibility, on 16.9.2015 a communication was sent to him and thereafter he has placed on record certain documents. These documents supplied later on, therefore, cannot be looked into. In any case, it is pointed out that those documents are of 11 KV Sub-station and not of either MSGPC Ltd., or NTPC, or SEB or Central or State organizational or Public Sector undertakings. He contends that thus a work privately done with utility and that too in relation to Sub-station only is being looked into as sufficient. He has pointed out that though in the tender there is a condition that technical or skilled labour employed by the petitioner must be continued by respondent no. 2, such continuation is not sufficient to meet the requirements. He has placed reliance upon the Division Bench Judgment of this Court reported at **2014(5) ALL MR 650 - (M/s M.F. Jain Engineers & Constructors vs. The Maharashtra State Power Generation Co. Ltd. & anr.)**, to which one of us (Shri B.P. Dharmadhikari, J.) is a party.

Advocate G.E. Moharir for respondent no. 1 and Advocate Anthony for respondent no. 2 have opposed the petition. Advocate Moharir submits that filing of necessary or

relevant documents after due date is not a case made out by the petitioner. According to him, all the documents were duly supplied by respondent no. 2 and as the documents required some clarification, a communication dated 16.9.2015 was issued. He has taken us through qualifying requirements about successful completion of work of “similar nature” to urge that the documents submitted by respondent no. 2 shows that the work about 50% of the current tender value has been successfully completed by respondent no. 2. He further argues that the details of the work expected from the contractor are given in tender notice. The head “scope of work” and the details therein show that skilled labour or unskilled labour has to assist the regular staff of respondent no. 1 in completing those tasks. He urges that the argument about qualitative difference between work at Sub-station and work at Thermal Power Station before this Court is not supported by pleadings. He has also taken us through relevant papers to substantiate these contentions.

Perusal of the records show that the petitioner is not right in contending that a favour was shown to respondent no. 2 and he was permitted to supply the documents after the due date. The documents filed by the petitioner finds a mention in scrutiny at Annexure-D. Said Annexure-D shows that respondent no. 2 had supplied five documents which reveal the date of order and its value. The petitioner is not disputing that if these documents are accepted, respondent no. 2 fulfills the requisite percentage of work as envisaged in qualifying requirements. There, while scrutinizing those five documents, last two documents are

found to be not legible. The concerned officer has put a remark that P.O. (purchase orders), copies of those two last documents of NTPC are not readable. This remark does not mean that the documents were not supplied earlier. On the contrary, it appears that only because of this remark, a communication dated 16.9.2015 was sent to respondent no. 2 and he was called upon to furnish those documents.

Application of mind *qua* these documents is also placed on record by the petitioner at Annexure-F. Its office note is procured by him under Right to Information Act. The Executive Engineer has signed on it on 10.9.2015. The five documents mentioned supra submitted by respondent no. 2 find consideration there.

Similarly, in absence of specific pleading that there is difference in nature of work to be performed at 11 KV Sub-station and 500 MW Thermal Power Station in so far as granting of assistance to staff of respondent no. 1 is concerned, it will not be possible for this Court to delve into niceties thereof. Perusal of "scope of work" reveals that a successful tenderer has to deploy one number of skilled man power in general shift for providing assistance to technical staff of Test-II for main plant (BTG) and store work, 4 number of semi-skilled manpower in A/B/C shifts (round the clock) for providing assistance to technical staff of Test-II. We need not elaborate on this because every where staff skilled or unskilled is required to be deployed by contractor to provide assistance to the regular staff of respondent no. 1. In this situation, we cannot examine contention of Advocate Mirza

that the work at 11 KV Sub-station done by such labours (skilled or unskilled) is qualitatively different as respondent no. 1 or respondent no. 2 did not get any opportunity to rebut this contention. The facet is too technical to be appreciated without necessary data.

It needs to be mentioned here that when we heard the matter on 14.1.2016 it was adjourned to enable the parties to point out what is “similar nature of work” in so far as the present contract is concerned and what should be the expertise with the personnel to be deployed by such contractor for said work. Thereafter the parties have filed additional affidavits and still the petitioner has not done anything to comment upon the nature of “similar work” or difference in nature of such work at Sub-station and Thermal Power Station.

The fact that otherwise respondent no. 2 fulfills the requirements is not in dispute. Challenge as argued has been considered by us. Matter is essentially in the domain of contract and there are no allegations of any arbitrariness or mala fides on the part of respondent no. 1 in the matter.

We, therefore, find no case made out warranting interference in the extra ordinary jurisdiction of this Court. Writ petition is rejected. No costs.

JUDGE

JUDGE