

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

66 WRIT PETITION NO. 1963 OF 2017

ABHAY TRADERS AURANGABAD THROUGH ITS PROPRIETOR A S SANCHETI
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Petitioner : Solanke Shrikrashna B.

AGP for Respondents State: Mrs. P. V. Diggikar

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 13th February, 2017

ORDER:

1. Mr. Solanke, the learned counsel for the petitioner submits that the terms and conditions of the tender which is issued by respondents for the purpose of supply of material to the schools under Mid Day Meal Scheme are *per se* and *ex-facie* erroneous. The said terms and conditions are incorporated to suit some of the contractors. Because of the said terms and conditions, the competition is sought to be eradicated and the same is against the purpose of issuance of tender. The learned counsel submits that the condition requiring supply to the schools proper is incorrect. The supply should be at one place in a Taluka, because considering the road condition, it would not be feasible to supply to the schools proper. The learned counsel submits that even the condition of applicability

of valid ISO certificate is bad in law. All the entrepreneurs do not get the ISO Certificate. The condition of having minimum average annual turnover of 80% of the estimated cost for last three financial years is too harsh. Only few contractors would be in a position to comply the same. The said condition is incorporated with a view that small contractors should be left out, because of the same the competition would be less. Even there is no necessity to have a condition of average annual turnover of 30% from business with the Central or State Government. The said condition does not have any rational object. The minimum liquid assets of 5% of estimated value is a condition alien to the purpose of the contract itself. The learned counsel submits that the respondents have to see the quality of the product that is to be supplied. They cannot insist that the person to whom tender is to be allotted should possess the minimum machines and dye installed in working condition in the factory. All these conditions are onerous and do not serve any purpose.

2. We have considered the submissions.

3. It is submitted that the petitioner had

participated in the tender process. After the technical bids were opened, it was found that the petitioner does not comply with the conditions. After having failed in the tender process, it is not open for a party to challenge the terms and conditions of the tender. The terms and conditions of the tender can be considered if the party approaches the court before participating in the tender process. Once having participated in the process and failed, it would not be open for the petitioner to challenge the said terms and conditions of the tender. In view of that, writ petition disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC