

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

WRIT PETITION NO. 10681 OF 2017

M/s Vishal Roadways Chikli through
its Proprietor S. N. Deshmane .. Petitioner

Versus

The Union of India and others .. Respondents

Ms. P. S. Talekar, Advocate i/by Talekar and Associates, Advocate
for the Petitioner.

Shri Sanjee B. Deshpande, A.S.G. for the Respondent No. 1.

Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 2.

Shri Abhijit M. Phule, Advocate for Respondent Nos. 3 and 4.

Shri R. V. Gore, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 26TH SEPTEMBER, 2017.

FINAL ORDER :

. The respondent No. 3 floated tenders for transportation of seeds from Jalgaon stocking point to different places within and outside the State of Maharashtra for the year 2017-2018. The petitioner and the respondent No. 5 submitted their bids and offers were opened. Thereafter, the respondent Nos. 3 and 4 took decision to issue fresh tenders. After the fresh tenders are issued, the petitioner has amended the petition and has challenged issuance of fresh tenders also. Pursuant to the fresh

tenders, the respondent No. 5 is issued with work order.

2. Miss Talekar, the learned counsel for the petitioner strenuously contends that, pursuance to the tenders floated on 01st August, 2017, the petitioner and the respondent No. 5 had submitted their bids. In twelve slabs, the petitioner was lowest bidder and in thirteen slabs the respondent No. 5 was lowest bidder. Cumulatively, the petitioner was lowest. The learned counsel submits that, the chart placed on record would substantiate the contention of the petitioner. The cumulative rate of the petitioner was Rs. 286.54 per ton per kilometer, whereas that of the respondent No. 5 was Rs. 293.76 per ton per kilometer. The learned counsel submits that, the petitioner had an apprehension that the tender would be allotted to the respondent No. 5, as such, the petitioner made a representation on 21.08.2017 to the respondent No. 4 giving details of the rates and how the cumulative rate of the petitioner is lowest. The learned counsel submits that, the petitioner had also expressed its apprehension that the petitioner would be denied the contract for extraneous consideration. The learned counsel further submits that, the rates quoted by the petitioner are lowest and if tender is allotted to the respondent No. 5, the same would cause loss to the public exchequer. The allotment of entire contract to a tenderer who has not quoted cumulative lower rates smacks of malafides. The learned counsel submits that, the contention of the respondent Nos. 3 and 4 that an expert committee decided to

re-tender cannot stand to any reason. If, the respondent Nos. 3 and 4 wanted to re-tender, then they ought to have done before the tenders were opened. The learned counsel further submits that, even there is clause in the tender, so also a practice is followed that, when there are various slabs, the work order is bifurcated to persons who have given lower rates for particular slabs. The said policy is long standing policy of respondents. Same is also not adhered too, but only with a view to favour the respondent No. 5, the re-tender has been resorted to by respondents. Even if fresh rates submitted by respondent No. 5 are perused, still it will show that for shortest volume of work, high rates are given. All these facts would show that the action of the respondents is arbitrary. When action is arbitrary, this Court can entertain the petition and set aside arbitrary action of respondents.

3. Mr. Phule, the learned advocate for respondent Nos. 3 and 4/Corporation submits that the cumulative rates of the respondent No. 5 were lowest. An expert committee took a decision to issue fresh tenders as only two tenders were received pursuant to the earlier tender notice and in re-tender that is after fresh tenders were issued, the respondents received six tenders. The respondent No. 5 was the lowest, therefore work order is issued to the respondent No. 5. The petitioner had not submitted its tender after fresh tenders were invited. The learned counsel submits that, even as per clause 39, the Regional

Manager reserves right to accept or reject any or all tenders without assigning any reason.

4. We have heard the learned Assistant Solicitor General for the respondent No. 1/Union, the learned counsel for the respondent No. 5 and the learned Assistant Government Pleader for the respondent No. 2/State.

5. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India would be slow in interfering with the matters of contract. Of course, if the action even in case of contract smacks of malafides and arbitrariness, this Court can exercise its jurisdiction.

6. In the present case, the tender notice was issued and only two tenders were received initially and as stated by the respondent No. 3, the Committee recommended for re-tender in view of the fact that only two bids were received and so also to have better competition and competitive rates. The said decision was within the realm of respondents.

7. Pursuance to the earlier tender floated on 01st August, 2017, no vested right was created in favour of any party.

8. The submission of the learned advocate for the petitioner to an extent that, if the respondents wanted to go for fresh tender on the ground only two tenders were received, the respondents

should not have opened the bids and disclosed the rates is appropriate and stands to reason. However, considering the fact that, only two tenders were received and expert committee took decision to call for fresh tenders, the same cannot be said to be malafide or arbitrary. There was delay on the part of the Committee in taking that decision. The same cannot be termed as malafide.

9. Pursuance to the second tender, the respondent/corporation received six tenders, as such the fresh tender made way for better competition. In the fresh tenders it was stated that cumulative rates were considered. How the tender is to be allotted, the manner of exercising discretion vest with the respondent/corporation. The discretion which they have exercised in going for fresh tender and allotting the tender to the tenderer offering lowest cumulative rate, does not appear unreasonable or arbitrary.

10. In the light of the above, we are not inclined to interfere in the allotment of tender. The writ petition is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]