

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14210 OF 2016

BNC Power Projects Limited ... Petitioner

V/s.

Maharashtra State Electricity
Transmission Co. Ltd. & anr. ... Respondents

Ms. Gauri R. Raghuwanshi for the petitioner.

Mr. A.A. Joshi for respondents 1 and 2.

**CORAM : NARESH H. PATIL AND
SMT. BHARATI H. DANGRE, JJ.**

29th June, 2017.

P.C.

The petitioner prays for following substantial relief:-

“ (b) By an appropriate Writ, Order or direction, this Hon'ble Court be pleased to direct the Respondent to produce the Original Tender document submitted by the Petitioner on 27/9/2010 in respect of the Tender floated on 6th October, 2010, so as to enable the Petitioner to make an Arbitration Application under Section 11 of the Arbitration Act.”

2. The petitioner submitted that inspite of making several efforts to get the necessary documents relating to the tender submitted by the petitioner, respondent failed to provide the tender documents. The Counsel appearing for respondents submitted that the original record was misplaced. In spite of putting best efforts record could not be traced out. To support the contention, affidavit-in-reply of Mr. Sulakhe P.D. working as the Executive Engineer with the Maharashtra State Electricity Transmission Co. Ltd. is filed. Paragraphs 2 and 3 of the said affidavit-in-reply reads as under:-

“2. I state that the impugned Tender Document No.03/2010-11 which the Petitioner sought in an application filed under the Right to Information Act is misplaced. I state that since the documents of the Tender are missing, I am unable to produce the same before this Hon'ble Court.

3. I state that, like any other Tender document issued by the Respondent Company, the impugned Tender Document would also contain an Arbitration Clause enabling the parties to refer the disputes under the Tender to either a Panel of Three Arbitrators or a Sole Arbitrator.”

3. The Counsel appearing for the petitioner submits that in case the

petitioner decides to file a civil Suit, there would be possible obstacle of law of limitation in filing the Suit. The only remedy available to the petitioner is to proceed under Section 11 of the Arbitration Act. Learned Counsel submits that it would be appropriate in the facts to observe that petitioner has such a right to invoke the provisions of the said Act.

4. In the facts we would not allow the prayer made by the petitioner. In view of the submissions advanced and the affidavit filed and other record placed before this Court, the petitioner may take appropriate steps.

5. With aforesaid observation, Writ Petition stands disposed of.

(SMT. BHARATI H. DANGRE, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.