IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2275 OF 2018

M/s Shobhana Traders, Nanded — Petitioner

Versus

The State of Maharashtra
& others — Respondents

Mr. V.D. Sonawane, advocate for petitioner.
Mr. S.B. Yawalkar, A.G.P. for respondents 1 to 5.
Mr. R.N. Dhorde, Senior Counsel instructed by Mr. V.S. Kadam, advocate for respondent no. 6.

CORAM : R.M.BORDE &
K.K. SONAWANE, JJ.
DATE : 15th MARCH, 2018.

PER COURT:

1. Heard.

2. Petitioner is a proprietary firm engaged in the business of commission agent and transport contracts having office at Old Mondha area, Nanded. Petitioner-firm claims to have experience and expertise in transportation of food grains. Petitioner also contends that it has got financial capacity and sufficient infrastructure to carry out the contract of transportation of food grains.

3. Respondent no. 2 - District Collector, Nanded floated e-tender notice inviting bidders to participate in the tender process in respect of transportation of food grains for three years duration under Public Distribution System. The tender is floated in observance of the policy prescribed by the State Government under

the resolution dated 20.04.2017. As per the terms of the tender, transportation contractor is required to submit his bid in respect of two stages of transportation of food grains. The first stage consists of transportation of food grains from Food Corporation of India godown to the Government godown whereas the second stage consists of transportation of food grains from Government godown to the concerned fair price shop. The bidder is expected to quote rates for both the stages of transportation of food grains. The base rate in respect of the first stage is Rs. 48/- per quintal whereas the base rate for the second stage of transportation is Rs. 40/- per quantal. The terms incorporated in the tender notice also prescribe that in the event of bidder quoting bid price 5% above the base rate, the matter is to be referred to the State Government for taking final decision.

4. In the instant matter, respondent no. 6 was found to be the lowest bidder whereas petitioner is the second lowest bidder. Respondent no. 6 has quoted rates at Rs. 65/- per quintal for the first stage whereas the rate quoted for the second stage is Rs.4.52/- per quintal. Thus, the total rate quoted for transportation of food grains for both the stages is Rs.69.52/- per quintal. Petitioner however, has quoted rate at Rs. 48/- per quintal and Rs. 24.88/- per quintal for both the stages i.e. the total amount quoted for both the stages by petitioner is Rs. 72.88/- per quintal. Petitioner contends that the decision taken by respondent no. 3 on 22.11.2017 accepting the price bid of respondent no. 6 is illegal since the concerned respondent i.e. respondent no. 6 does not fulfill the eligibility criteria prescribed under the tender notice. According to petitioner, the certificate showing financial capacity

and experience has not been produced by respondent no. 6. Respondent no. 6 did not produce his balance-sheet to demonstrate his financial capacity and experience. It is further contended that as per the Government Resolution dated 30.04.2017, a Committee constituted under the Government Resolution is required to take decision however, said decision has been arrived at in breach of the Government policy. Petitioner contends that the rates quoted by respondent no. 6 for the second stage of transportation are extremely low and it would be impossible for respondent no.6 to fulfill the obligation towards payment of minimum wages to the drivers, hamals and other employees and to pay necessary taxes. It is further contended that since the rates quoted for the first stage of transportation are beyond 5% of the base rates, the matter should have been referred to the State Government for proper decision and it would not be permissible for respondent no. 3 to take decision and accept the bid furnished by respondent no. 6.

5. Respondent no. 6 as well as the Collector has presented affidavit-in-reply denying the contentions raised by petitioner. It is the contention of respondents that the terms of the tender do not mandate submission of balance-sheet. Respondent no. 6 has placed on record certificate issued by the Chartered Accountant demonstrating its financial capacity and experience. Apart from this aspect, the experience certificate placed on record issued by the Central Warehousing Corporation confirms that respondent no. 6 has experience in respect of handling of rakes of food grains and the transactions carried out by respondents are much above the tender prescription. The District Supply Officer has also

certified that respondent no. 6 has experience to carry out the job of transportation of food grains and the value of the tender work in past is much above the prescribed limit provided under the tender conditions. Thus there appears to be no substance in the contention of petitioner that respondent no. 6 lacks experience.

6. So far as prescription of rate for the second phase of transportation quoted by respondent no. 6 is concerned, it appears to be quite less than the base rates, however, the total amount quoted by respondent no. 6 for transportation of food grains is Rs.69.52/- per quintal which, as per the estimation of respondents is sufficient to carry out the job. Respondent no.6 was asked to furnish explanation in respect of low rates for transportation of second phase. Respondent no. 6 tendered explanation contending that there is no lower limit prescribed for quoting the rates and it would be economically feasible for respondent to carry out the contractual obligation. Since the price quoted by respondent no. 6 is not beyond the collective base price provided under the contract i.e. Rs.88/- per quintal, it is not at all necessary for the respondents to refer the matter to the State Government.

7. Petitioner has raised objection relating to constitution of partnership firm of respondent no. 6 however, considering the registered document of partnership, the objection raised by petitioner appears to be devoid of substance. But the contention raised by respondents that petitioner has approached this court with malafide intention to retain the work of transportation of food grains with it, bears substance. It is pointed by respondents that petitioner was allotted work of transportation of food grains in the

year 2006 for a particular period. After completion of the period, no tender process was conducted by respondent-authority till issuance of present tender notice on 09.10.2017. Petitioner somehow managed to secure extension of the job for a period of ten years. The rates quoted by petitioner for conducting the job of transportation are on higher side. Petitioner thus is interested in retaining the work and derailing the tender process.

8. It appears that the contract of transportation of food material was earlier granted in favour of M/s Shobhana Transport Company. Petitioner contends that it is a partnership firm and he has no relation with Shobhana Transport Company. Contention raised by petitioner denying the relationship with Shobhana Transport Company appears to be false. Petitioner-firm is represented by one Shri Tukaram Purushottam Mahajan, who claims to be the proprietor whereas said individual is a partner in the firm Shobhana Transport Company. Partnership document is placed on record by respondents which records name of Shri Mahajan as partner of the firm. Respondent no. 9 Shobhana Transport Company is also one of the bidders in the present tender process. Petitioner as well as respondent no. 9 could not succeed in the tender process and as such, with a malafide intention instant writ petition is presented. Apart from this, an attempt was made to stall the process at the instance of Paldewar Prashant Agro Tech Pvt.Ltd. Suit bearing Regular civil Suit No. 521/2017 came to be presented by said firm in the Court of Civil Judge, Senior Division, Nanded, Initially, order of status quo was issued by the trial Court however, application seeking injunction was ultimately rejected on 24.01.2018. The matter was carried in

appeal before the District Court. Appeal presented by Paldewar Prashant AGro Tech Pvt. Ltd. also came to be dismissed on 27.02.2018.

9. There is another petition presented by Triumph Info Solution Pvt. Ltd. through its director Pravin s/o Nagnathrao Paldewar, which is also being taken up alongwith the instant petition. Petitioner Pravin is real brother of Prashant who had presented suit before the Civil Judge, Senior Division, Nanded. Petitioner Triumph Info Solution Pvt. Ltd. was not qualified in the tender process. It is alleged by respondents that petitioner in the companion petition is closely connected with the petitioner in the instant petition. It does prima facie appear that there is an attempt to stall the tender process by petitioner in the companion petition as well as present petitioner since he is being benefited as a result of delay in finalising the tender process. Thus, there does not appear to be any substance in the contention raised by petitioner.

10. The Honourable Supreme Court in the matter of **Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd. and another** reported in **(2005) 6 Supreme Court Cases 138** has observed that the Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best

person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. In the instant matter, it has not been argued that the power is exercised by respondent-authority for collateral purpose or that there are malafides alleged against the Government officials. Respondent no.6 has quoted lowest rates and considering the aspect that respondent no.6 fulfills all necessary pre-conditions including the condition in respect of past experience, a decision is taken to award contract in favour of respondent no. 6, which does not appear to be arbitrary.

11. In the matter of **Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & others** reported in **1991(1) SCC 492**, it is observed by the Honourble Supreme Court in paragraphs 9 and 10 thus :

> 9. The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be :
>
> (1) the price at which the other side is wiling to do the work;
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> (2) whether the goods or services offered are of the requisite specifications;
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> (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or

> requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;
>
> (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;
>
> (5) past experience of the tenderer and whether he has successfully completed similar work earlier;
>
> (6) time which will be taken to deliver the goods or services; and often
>
> (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest ? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality

> of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work - thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g. a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

12. In the matter of **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651**, the Honourable Supreme Court has examined the scope of judicial review in case of tenders awarded by public authority for carrying out certain work. It is observed in paragraph no. 71 of the judgment thus :

> 71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters... and the need to remedy any unfairness. Such an unfairness is set right by judicial review."
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> After examining a number of authorities, the Court concluded (at pp. 687-88) as follows :
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> (1) The modern trend points to judicial restraint in administrative action.
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> (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
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> (3) The court does not have the expertise to correct the administrative decision. If a

> review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.
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> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in th realm of contract.
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> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi-administrative sphere. However, the decision can be tested by the application of the"Wednesbury principle" of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides.
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> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

13. Considering the principles laid down by the Honourable Supreme Court in the judgments as quoted above as well as for the reasons recorded above, we do not find that there is any reason to cause interference in the instant petition. Writ petition is devoid of substance hence stands rejected.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE

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