

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

906 WRIT PETITION NO. 2867 OF 2018

**SACHIN PURUSHOTTAM SANER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr.Shailesh P.Brahme
and Mr.Mohit S.Shah
AGP for Respondents - State : Mr.S.S.Dande

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**CORAM : R.M.BORDE AND
K.K.SONAWANE, JJ.**

DATE: 20th March, 2018

PER COURT:-

1) The petitioner is objecting to the tender process initiated by the respondents in respect of construction of Gated Cement Bandharas in Tal.Sakri, Dist.Dhule. The petitioner contends that as a result of restrictive conditions put-in in the tender notice, the petitioner and other similarly placed contractors could not participate in the process, thereby restricting the field of competition.

2) The petitioner contends that clause no.7 of the tender conditions prescribes that 'the bidder

must have completed atleast one similar type of work such as construction of Cement Concrete Bandhara, Kolhapur type weir and similar water retaining concrete structure and the cost of such similar work completed should not be less than 50% of the tender cost in a single year during the period of last three years'.

3) The petitioner contends that stipulation of condition in clause No.7 is contrary to the conditions laid down under the Government Resolution dated 19.9.2017. Clause No.10.2 of the above said Government Resolution prescribes that 'the condition in respect of similar type of work shall be modified by the Chief Engineer to the limit of 30% of the quantity (minimum)'.

4) The learned AGP appearing for the State points out that the standard bidding document published by the Government prescribes that the contractor shall have completed atleast one similar work of the value not less than 50% of the estimated value

of the contract. It is contended that the stipulation as regards 30% of work done recorded in the Government Resolution is the minimum requirement which can be modified.

5) The another objection raised by the petitioner is as regards the observance of the time-frame stipulated under the Government Resolution dated 12.4.2017. It is contended that the time-frame of minimum 25 days from the date of publication of tender notice has not been observed and less period is left for the participation of the contractors in tender process, which has affected the prospects of participation for large number of bidders.

6) Third objection raised by the petitioner is in respect of non-consideration of the representation of the petitioner on 1.3.2018.

7) It must be noted that as per the scheduled program, a pre-bid meeting was prescribed on

26.2.2018, at 13:00 hours. However, petitioner opted not to attend the meeting and did not raise any objection. All stages of program declared by the Department are completed and the financial bids have also been opened. Although the tender notice was published on 17.2.2018, the petitioner opted not to participate in the pre-bid meeting and has approached this Court belatedly on 14.3.2018 after completion of tender process. The petitioner has not alleged malafides against the respondents. There also does not appear to be any substance in the contention of the petitioner that the field of competition has been restricted as a result of prescription of stringent condition. It is noticed that sufficient number of bidders participated in the tender process and there was a fair response to the tender notice.

8) The scope of interference in the tender matters is restricted. This Court in exercise of writ jurisdiction is expected to scrutinize the process and if it is noticed that the process

itself is non-transparent or that there is any loss to the State exchequer or that there is any arbitrariness in the process, the Court may cause interference.

9) Normally, it is the domain of the Department to lay-down the terms and conditions and unless those are demonstrated to be malafide or tailer-made to facilitate participation of an individual or a class or that process is non-transparent or arbitrary then only this Court may be called upon to cause interference in the tender process.

10) In the instant matter, for the reasons recorded above, there is no warrant to cause interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Petition is devoid of merit, hence stands dismissed.

(K.K.SONAWANE)
JUDGE

(R.M.BORDE)
JUDGE