IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11384 OF 2018

M/s Siddhi Plastic Industries,
Plot No. 03, Gut No. 29/2/2,
Gorakshanth Road, Dehere,
Tq. & Dist. Ahmednagar.
Through its Executive Director,
Satyajit s/o Gulabrao Daspute,
Age: 33 years, Occu.: Business. **...PETITIONER**

Versus

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.

2. The Divisional Forest Officer,
Social Forest Division,
Divisional Commissioner Officer,
Administrative Building, 2nd Floor,
Nashik Road, Nashik.

3. M/s Khandelwal Plastic Industries,
Through its Proprietor
Chhavi Khandelwal,
Bangari Chowk, Bangari Road,
Gole Bazar, Raipur, (Chhattisgarh). **... RESPONDENTS**

Mr. H. V. Dhage, Advocate for the Petitioner.
Mrs. V. N. Patil Jadhav, AGP for Respondent/State.

CORAM : R.M. BORDE &
MANGESH S. PATIL, JJ.
DATE : 12.10.2018

JUDGMENT: *(Per Mangesh S. Patil, J.)*

Heard. Rule. The learned A.G.P. waives service for the respondent nos. 1 and 2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is a private limited company duly registered under the provisions of the Companies Act, 1956. It is authorized by the Government to participate in the tender processes through the Maharashtra Small Scale Industries Development Corporation Limited (M.S.S.I.D.C.)

3. The respondent no. 2 who is the Divisional Forest Officer floated an e-tender on 14.09.2018 for purchase of polythene bags. The petitioner through M.S.S.I.D.C. participated in the tender. The process was to consist of technical bid and financial bid. It was specifically notified that the terms and conditions *inter alia* for furnishing documents needed to be complied with in order to become qualified for technical bid. However, the respondent no.3 submitted the bid but failed to comply with the terms and conditions laid down under entry (c), (e), (g) of clause no. 6.1.1. The respondent no.3 failed to submit following documents:

(1) Scanned copy of technical bid form duly filled.

(2) Scanned copy of details about after sale service support network in

Maharashtra.

(3) Scanned copy of last Income Tax return.

(4) Valid registration under the Shops and Establishments Act in Maharashtra.

4. Thus, according to the petitioner, for want of compliance with these terms and conditions the respondent no.3 was not eligible to participate in the technical bid itself. However, the respondent no.2 has over-looked these short-comings and has arbitrarily completed tender process by opening the financial bid and accepted the offer of the respondent no.3 which decision is arbitrary and illegal.

5. The learned advocate for the petitioner vehemently submitted that the respondent no.2 should not have overlooked the short comings in the proposal submitted by the respondent no.3. All the conditions were mandatory and ought to have been complied with. Failure to do so should have been considered to hold him ineligible and therefore the writ petition deserves to be allowed as prayed for. Lastly the learned advocate placed reliance on the Division Bench decision of this Court in the case of **Shah Investments, Financial, Developments & Consultants Pvt. Ltd., & Control Automation Projects Pvt. Ltd., V/s. The State of Maharashtra and Ors.;** in

Writ Petition Nos. 7843 and 8211 of 2014.

6. The learned A.G.P. vehemently opposed the petition. He submitted that there is limited scope for the Courts to intervene in the decision making process in the field of allotment of tenders by the Government. The objections raised by the petitioner are merely technical and by their very nature they do not reflect upon the competency of the respondent no.3 to perform the work. Besides, factually, the objections being raised by the petitioner do not sustain. Since it was found that the contract was merely for supply of ploythene bags, there was no question of any after sale service and therefore that condition was dropped by the committee scrutinizing the tenders. Even Income Tax return for the assessment year 2016-2017 was furnished by the respondent no.3. Besides even the committee scrutinizing the offers confirmed that all the tenderers had filed Income Tax returns. As regards registration under the Shops and Establishments Act in Maharashtra, the condition did not mandatorily require registration under that Act in Maharashtra. As an option, registration of the firm or company was sufficient and the respondent no.3 was found to be registered with the District Industries Centre, Raipur. Therefore, factually non of the objections are tenable.

7. The learned A.G.P. placed reliance on the guidelines laid down by the Supreme Court in the case of **Raunaq International Ltd. V/s. I.V.R. Construction Ltd.; (1999) 1 Supreme Court Cases 492** and also in the Division Bench decision of this Court in the case of **ACC India Private Limited & Ors. V/s. The State of Maharashtra and Ors.** in Writ Petition (Lodg.) No.2321 of 2018 decided on 30.07.2018 (Principal Seat) and in the case of **M/s. K.K. Vidyut V/s. The Union of India and Ors.; 2016 (6) ALL M R 21**.

8. We have carefully considered the record. As far as the scope of judicial review in the tender matters floated by the Government, the law is well settled. Suffice for the purpose to refer to and rely upon the guidelines laid down in **Raunaq International Ltd.** (supra) and particularly the observations in paragraph nos. 9 to 11, wherein *inter alia* it has been laid down that unless the Court is satisfied that there is substantial amount of public interest or the transaction is entered into *mala fide*, the Court should not intervene under Article 226 of the Constitution in the disputes between two rival tenderers.

9. Bearing in mind such trite legal principle, it is necessary to note at this juncture that the petitioner has not at all averred in the petition about

the manner in which the public interest having been adversely affected by accepting the bid of the respondent no.3. For that matter even the averments in the petition are sans allegation attributing *mala fides* on the part of the respondent no.2 in accepting the bid. The whole emphasis in the petition is about non compliance with few entries in Clause 6.1.1 in respect of submission of some documents. Therefore even without touching the factual aspects, we are of the considered view that the petition lacks sufficient, cogent and relevant pleadings so as to invoke the powers of this Court under Article 226 of the Constitution of India so as to intervene in the process.

10. The objection of the petitioner was factually considered by the respondent no.2 and have been specifically refuted by addressing a letter to Regional Manager, M.S.S.I.D.C. Limited by the letter dated 05.10.2018 on which date the technical bids were opened. Though, it would not be appropriate for this Court to scrutinize the facts, this reply clearly demonstrates that the objections raised by the petitioner were duly considered by the respondent no.2. As far as the objections regarding not furnishing document in respect of after sale service, it was informed that the condition was found to be unnecessary and was dropped in respect of every bidder since the tender was only for supply of polythene bags and there was no question of any after sale service.

11. As far as copy of Income Tax return is concerned it was informed that the respondent no.3 had submitted the Income Tax return for the assessment year 2016-2017 which was its last income tax return as was required by entry (g) of Cause 6.1.1.

12. As regards the condition in respect of entry (a) of Clause 6.1.1, the condition reads as under:

'Scanned copy of Valid Certificate of Registration under Maharashtra Shop and Establishment Act, 1948 / Registration of firm or Company.'

A bare perusal of this entry would reveal that it is not necessary that the bidder should be registered under Maharashtra Shops and Establishments Act, 1948 and it could be registered firm or company as well. It was accordingly found that the respondent no.3 was a firm registered under the District Industries Centre, Raipur. It is thus quite apparent that factually even the bid submitted by the respondent no.3 cannot be said to be ineligible on any count.

13. As is observed earlier, the scope for this Court to intervene in the tender process floated by the State Government or its department is limited and we are of the firm view that in the fact situations of the matter in hand, the petitioner has failed to demonstrate as to how the bid of the respondent

no.3 is against the public interest or is vitiated by *mala fides*, in the absence of which this Court cannot invoke the powers under Article 226 of the Constitution of India.

14. In this regard it is further pertinent to note that even according to the petitioner the offer made by the respondent no.3 is the lowest one. It is of Rs. 1,61,64,000/- where as the offer of the petitioner which is the second lowest is of Rs. 1,92,50,000/-. It is thus apparent that the offer of the respondent no.2 is substantially lower. Therefore even from angle of burden on the public exchequer the offer of the respondent no.3 cannot be said to have any adverse effect on the public exchequer.

15. As far as the decision of the Division Bench of this Court cited by the learned advocate for the petitioner in the case of **Shah Investments, Financial, Developments & Consultants Pvt. Ltd., & Control Automation Projects Pvt. Ltd.** (supra) is concerned, suffice for the purpose to observe that the matter was taken to the Supreme Court and it was pleased to quash and set aside the judgment of the Division Bench in **Elektron Lighting Systems Private Limited and Another V/s. Shah Investments Financial Developments and Consultants Private Limited and Others,; (2015) 15 Supreme Court Cases 137.**

16. In this view of the matter, we see no sufficient and cogent reason to intervene. The Writ Petition is devoid of merit and is liable to be rejected.

17. The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.] **[R.M. BORDE , J.]**

KAKADE