

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 26226 OF 2018

D. R. Services,
The Proprietorship Firm,
Through Prop. Shri. Rajkumar B
Dhakane

...Petitioner

Versus

Shri. Diwakar Raote,
Hon'ble Minister For Transport,
And others

...Respondents

....

Mr.Dinesh P. Adsule, Advocate for the Petitioner.
Ms. S.D. Vyas, "B" Panel Counsel a/w. Mr. M.M. Pabale, AGP for the
State.

....

CORAM : NARESH H. PATIL, ACTING C.J. &
R. G. KETKAR, J.

DATE : 14th SEPTEMBER, 2018

P.C. :

1. Heard Mr. Dinesh Adsule, learned Counsel for the petitioner and Ms. S.D. Vyas, learned "B" Panel Counsel for the respondents, at length.

2. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the process of fresh e-tender notice No.RTO/PAYANDPARK/2018/1/2 issued by the Regional Transport Officer, Pune, respondent No.3 herein, inviting tenders in respect of pay and park at (1) R.T.O. Pune-38, Dr. Ambedkar Road, Near Sangam Bridge, Pune-411001, (2) R.T.O. office at Alandi Road, (3) Gat No.3,

village Dive, Taluka-Purandar, District-Pune as also for supply of security guards. The petitioner has also sought direction to the respondents to allot the tender work in respect of pay and park at (1) R.T.O. Pune-38, Dr. Ambedkar Road, Near Sangam Bridge, Pune-411001, (2) R.T.O. office at Alandi Road, (3) Gat No.3, village Dive, Taluka-Purandar, District-Pune to the petitioner as per the e-tender process notice published on 22.5.2018 at Exhibit-A (pages-15 to 19).

3. The respondents gave advertisement on 22.5.2018 inviting e-tender for Pay and Park with Cleaning at (1) R.T.O. Pune-38, Dr. Ambedkar Road, Near Sangam Bridge, Pune-411001, (2) R.T.O. office at Alandi Road, (3) Gat No.3, village Dive, Taluka-Purandar, District-Pune. On the same day, the petitioner filed e-tender for all the three places. The last date for submitting the tender was 16.6.2018 till 2:00 p.m. The tenders were to be opened at 2:00 p.m. on 18.6.2018. On 19.6.2018, the respondents accepted the finance bid submitted by the petitioner. The petitioner had offered Rs.50,59,200/- and was ranked Lowest-3 (L-3). As against this, Starlink Corporation had offered Rs.33,64,000/- and was given rank Lowest-1 (L-1). Cyber City Link had offered Rs.40,32,000/- and was ranked Lowest-2 (L-2). On the same day, the petitioner addressed a letter to the third respondent setting out therein that as per the Tender Summary Report, the petitioner's

Financial and Technical bid is accepted. The petitioner, therefore, requested to issue work order at the earliest. Instead of issuing work order, the third respondent issued letter dated 28.6.2018 alleging non-compliance of the essential conditions and called upon the petitioner to offer remarks within three days from receipt of said communication.

4. It is the case of the petitioner that by communication dated 2.7.2018, the petitioner responded to the communication dated 28.6.2018. It is the grievance of the petitioner that without communicating the decision, on 18.8.2018 the respondents have issued fresh tender notice. On 20.8.2018, the petitioner caused to issue notice through Advocate to the respondents calling upon them to cancel the fresh e-tender process and allot the work to the petitioner within three days from receipt of the notice failing which the petitioner will be constrained to initiate appropriate legal proceedings. As there was no compliance of the requisition, the petitioner has instituted present Petition.

5. Mr. Adsule submitted that on 1.9.2018 respondent No.3 informed the petitioner regarding cancellation of the e-tender process dated 22.5.2018 and issuing fresh tender process. Said communication was received by the petitioner on 10.9.2018. In the first place, the communication dated 1.9.2018 was issued only after issuing fresh

tender process on 18.8.2018. Secondly, a perusal of this communication shows that earlier tender process was cancelled solely on the ground that there was no competition. In other words, earlier tender process was not cancelled on the ground that the petitioner does not satisfy the essential conditions of the tender process. He submitted that as both the Financial and Technical bids submitted by the petitioner were accepted there is concluding contract between the parties. It is, therefore, not open for the respondents to cancel the earlier tender process and issue fresh tender notice. He, therefore, submitted that fresh tender notice issued on 18.8.2018 deserves to be set aside thereby granting the prayers in terms of prayer clauses (b) and (d) of the Petition.

6. On the other hand, Ms. Vyas submitted that by letter dated 28.6.2018 the petitioner was communicated the objections raised by the un-successful bidders and the petitioner was called upon to give his remarks within three days from receipt of said communication. In pursuance thereof, the petitioner submitted his response on 2.7.2018. The Committee constituted for considering the Pay and Park tenders convened its meeting on 9.7.2018 and considered the objections raised by un-successful bidders and the response / remarks of the petitioner. After considering the entire material on record, the Committee

concluded that the petitioner does not fulfill the essential conditions of the tender. In all six tenderers submitted tenders and five were rejected thereby only the petitioner remained in the fray. Thus there was no competition in the tender process. Ms. Vyas submitted that the communication dated 1.9.2018 only records that there is no fair competition in the tender process. However, the Committee concluded that in addition to this, the petitioner did not fulfill the essential conditions. She further submitted that the petitioner had submitted fresh tender on 13.9.2018 and though the last date for opening fresh tender was 14.9.2018 at 3:00 p.m. the same is postponed to 18.9.2018. She further submitted that the petitioner's financial bid is accepted and there is no concluded contract between the parties. She, therefore, submitted that no case is made out for interfering with the fresh tender process.

7. We have considered the rival submissions advanced by the learned Counsel appearing for the parties. We have also perused the material on record. A perusal of the Tender Summary Report dated 19.6.2018 shows that the petitioner's financial bid was accepted and he was ranked Lowest-3 (L-3). On 28.6.2018, respondent No.3 issued communication to the petitioner *inter alia* pointing out following objections raised by un-successful bidders :

- (1) Pay & Park business is not registered in the Shop & Establishment certificate;
- (2) Labour license expired in the year 2012;
- (3) Public Provident Fund and Employees Insurance Scheme is not updated from 2007;
- (4) No copy of the Security Agency contract and licence is provided; and
- (5) No previous Pay and Park experience.

8. A perusal of the tender notice dated 22.5.2018 and in particular clause-B pertaining to the Technical Bid Information, shows that Items 1 to 7 were mandatory/essential conditions and in respect of Items No.8 and 9 the successful bidder has to submit documents within one month from the date of entering into the contract between the parties. A perusal of conditions No.1 to 7 shows that among them the successful bidder has to submit a attested copy of the Shop Act licence showing business of Pay & Park and also a attested copy of valid labour licence. From the response dated 2.7.2018 as also the notice dated 20.8.2018 of the petitioner, it is evident that the petitioner does not fulfill at least two mandatory/essential conditions. A perusal of the minutes of the meeting dated 9.7.2018 of the Committee constituted for considering the tender process also shows that the Committee concluded that the petitioner would not fulfill the mandatory/essential

conditions of the tender process. In view thereof, we do not find that any case is made out by the petitioner for granting any relief. Mr. Adsule submitted that as the Financial and Technical bids of the petitioner were accepted, there is concluded contract between the parties. It is not possible to accept this submission. The petitioner has not produced any material to indicate that his technical bid is accepted. All that the petitioner has contended is that his financial bid is accepted and the petitioner was ranked as Lowest-3 (L-3). In view thereof, no case is made out for invocation of powers under Article 226 of the Constitution of India.

9. Before parting we have to place on record the manner in which the decision of the Committee was communicated to the petitioner on 1.9.2018. It was expected from the respondents to communicate the decision well in advance before issuing fresh tender notice. That apart, a perusal of the communication dated 1.9.2018 also shows that the reason of petitioner's non-complying the mandatory/essential conditions is not mentioned therein. We expect the respondents to be careful in future.

10. Subject to above, the Petition fails and the same is dismissed.

[R. G. KETKAR, J.]

[ACTING CHIEF JUSTICE]

Deshmane (PS)