

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

WRIT PETITION NO.11881 OF 2017

Skylark Thermal Energy Systems

Through its Proprietor

Rajkumar Bhaurao Shinde

: Petitioner.

Versus

The State of Maharashtra and ors.

: Respondents.

Mr. Pankaj D Purway for the Petitioner.

Mrs. M P Thakur, AGP, for the Respondents/State.

**CORAM : R. M. SAVANT &
NITIN W. SAMBRE, JJ.**

DATE : 9th OCTOBER 2018

P.C.

1 The invitation by tender of offers for supply of Solar Water Heating System by incorporating two conditions therein issued by the Public Works Department, Government of Maharashtra has triggered off the filing of the above Writ Petition.

2 The two conditions are inter-alia that the contractor is required to hold a electrical contractors license and second condition is that of registration with the Public Works Department, Government of Maharashtra. By the order dated 30/01/2018 passed in the above Writ Petition, a Division Bench of this Court had expressed doubts about prescription of the said condition of the electrical contractors license in so far as the supply of the Solar Water Heating System are concerned. The Division Bench was of the view that there is no

electrical installation which requires the need for having the electrical contractors license. In so far as second condition as regards registration of the contractor with the the Public Works Department, Government of Maharashtra is concerned, the Division Bench found it illogical for the Public Works Department insisting for the registration of the contractor in respect of the tenders which were upto Rs.1.50 crores and not for the tenders above the said figure of Rs.1.50 crores. The Division Bench accordingly directed the Principal Secretary of the Public Works Department, Government of Maharashtra to justify the said conditions which were appearing in the tender in question. The Principal Secretary of the Public Works Department, Government of Maharashtra has accordingly filed an affidavit wherein he has justified the prescription of the said two conditions.

In so far as requirement of the electrical contractors license is concerned, the Principal Secretary has referred to 4 ancillary sub-works which were required to be carried out under the said tender which involved electrical installation and therefore the need for electrical contractors license. In so far as the condition of registration with the Public Works Department, Government of Maharashtra is concerned, the Principal Secretary of the PWD has stated the rationale in carving out two classes that is in respect of the contractors who are eligible for works upto Rs.1.50 crores and in respect of the contractors who are above the said figure. It is stated in the said affidavit that

large number of contracts are below Rs.1.50 crores and there are a few contracts above Rs.1.50 crores where big agencies who usually undertake high value work and who are not registered with the the Public Works Department, Government of Maharashtra who participate. It is to facilitate such participation in high value work tenders that the distinction has been made.

3 Having perused the reasons mentioned in the affidavit justifying the said two conditions, the same commend acceptance to us. The learned counsel for the Petitioners seeing our inclination in respect of the challenge to the said two conditions thereafter endeavoured to contend that in terms of the policy the PWD was required to procure the items in question by way of Government e-marketing established by the Central Government and therefore according to him it is not open for the PWD to invite tenders. The said submission can be said to be the last straw on the camels back inasmuch as seeing the writing on the wall in respect of the challenge to the said conditions, the learned counsel for the Petitioner sought to raise the aforesaid contention. In our view, the Petitioner cannot be allowed to approbate and reprobate viz. on the one hand challenge the two tender conditions which caused an impediment for him to participate in the tender process and contend that the procurement should have been by the Government e-marketing.

It is trite that the Authority inviting the tenders has the necessary

discretion to prescribe such conditions in the tender as it suits its requirements.

4 In our view, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[NITIN W. SAMBRE, J]

[R. M. SAVANT, J]

Laxmikant
Gopal
Chandan

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by Laxmikant
Gopal Chandan
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