

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

3 PUBLIC INTEREST LITIGATION NO.121 OF 2012
WITH CA/6372/2013 IN PIL/121/2012

SURESH DAMODAR KOLHE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Shri A.G. Talhar h/f Shri Gaikwad Pramod S.

AGP for Respondent no.1 : Shri P.S. Patil

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 23.09.2019

PER COURT :

- 1] Heard learned counsel for the parties.
- 2] Public cause espoused in the instant public interest litigation is to the effect that for the tender floated on 13.1.2012 to construct the Waghur Project Lift Irrigation Scheme, of the nine offerers, seven were technically disqualified resulting in there being only two players left to compete and as a result work being awarded to the fourth respondent at 30% above the tender estimated cost.
- 3] With reference to Clause 1.11 of the tender document, learned

counsel for the petitioner urges that to ensure adequate competitiveness in the bids, power is vested in the committee to relax the appropriate criteria so that at least three bidders remain in the fray.

4] Thus, two contentions are advanced. Firstly, that the power of relaxation was not exercised and secondly that due to inadequate competition in the bid, a bid at 30% above the estimated cost of the tender was accepted.

5] With respect to power of relaxation, the clause in question does not mandate that in every case, relaxation has to be accorded. This is evident from the use of the word “*may relax*”.

6] That apart, the discretion to relax the appropriate criteria has to be within the limits of the object of the criteria i.e. the bidders must prove their credit worthiness.

7] In the petition, we do not find any averments made as to which of the criterion could possibly be relaxed in a manner that competitiveness was ensured simultaneously maintaining the credit worthiness of the bidder concerned.

8] On the issue of the tender being accepted at 30% above the estimated cost, no pleadings have been made with reference to the schedule

of quantities and the schedule of rates to even *prima facie* justify that acceptance of the tender at 30% above the estimated cost was improper.

9] The prayer made is to cause an enquiry to be made and in the interregnum award of the work to the respondent No.4 be stayed.

10] Unfortunately, the petition filed in the year 2012 languishes in the record room of this Court. In the absence of a stay, the tender was allotted to respondent no.4. There is no evidence of the current status of the works, but that is irrelevant.

11] No relief can be granted as prayed for. The petition is dismissed. Civil Application No.6372/2013 seeking addition of certain paragraphs in the petition is also dismissed.

(R.G. AVACHAT, J.)

CHIEF JUSTICE