

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14148 OF 2018

VIJAY MANDAP SOUND SERVICES,
THROUGH ITS PROPRIETOR,
VIJAY BABURAO SHINDE (PATHRIKAR)
VERSUS
THE STATE OF MAHARASHTRA, THROUGH DISTRICT
COLLECTOR ALIS ELECTION OFFICER, DISTRICT
COLLECTOR OFFICE, OSMANABAD, DISTRICT : OSMANABAD

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Advocate for Petitioners :
Mr. A. K. Gawali h/f. Mr. Dharasurkar Yogesh R.
AGP for Respondent : Mrs. A. V. Gondhalekar

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 08th MARCH, 2019

PER COURT :

1. The petitioner participated in the tender process pursuant to the tender floated by the respondent for providing arrangement for the Lok Sabha and Vidhan Sabha 2019 general elections. The same was in order to facilitate the election accommodating the public at large for conducting the election related activities, pendols, furniture, electricity generator, air conditioners etc.

2. Fifteen participants participated in the tender process. The petitioner was declared the lowest bidder i.e. L1. The respondent communicated the petitioner that the bid of the petitioner is rejected, aggrieved thereby the present petition.

3. Mr. Gawali, learned Advocate for the petitioner strenuously contends that the petitioner was declared successful bidder i.e. the lowest one. The petitioner also received the communication on 02.11.2018. The petitioner was invited for negotiations. The petitioner negotiated with the respondent over the itemwise bidding rates, however, the respondent expected to revise the itemwise rates by the petitioner as compared to the other bidders who had given the lowest rates itemwise. The petitioner's bid was lowest, considering the accumulated rates of all the items in the bid. The learned Advocate submits that the petitioner has submitted the realistic bid. The petitioner again communicated that he is ready to revise the rates again and as far as

the 6 items which according to the respondent; petitioner quoted high rates, the petitioner communicated his willingness to bring it down to the second lowest rates of the tenderer. The learned Advocate submits that each and every time the tender is allotted to the person submitting the lowest accumulated rates. A new novel method is adopted by the respondent in seeking lowest rates itemwise. The learned Advocate submits that the petitioner has placed on record comparative chart showing rates of the petitioner and the other bidders. The learned Advocate submits that as per the tender 36 items were to be executed. He communicated that he is ready to match the rate of L1 in respect of 20 items and L2 in respect of 10 items. In respect of remaining 6 items he had marginally reduced the rates. The petitioner was always ready and willing to match the rate of 6 items with the rates of L3 bidder. The learned Advocate submits that once the policy for evaluating the financial bid has been decided, it

is not open to the tendering authorities to adopt a different policy or methodology for evaluating the bidder. The petitioner relies on Clause 4.4.4 (6) of Government Resolution dated 01.12.2016. The tender document would reflect that the tender is to be allotted to the lowest bidder. For similar type of tender in the year 2014, the total aggregate value of all the 33 items were considered and the lowest accumulated offer was accepted. For similar type of contract the Collector, Jalna also considered the aggregate per day rent of the 34 items. It is only the respondent who deviated from the same. The respondent is deviating from the well established methodology of evaluating the rates.

4. According to the learned Advocate, Government Resolution dated 01.12.2016 provides guidelines to evaluate in which negotiations can be conducted. In the present case, the respondent did not have the market rate in order to compare the rates offered by the competing bidders. The negotiations

can be conducted as per Government Resolution dated 01.12.2016, if the rates quoted in respect of the same items are without any base or higher than the market rate. In absence of any such record the respondent authority ought not to have rejected the tender.

5. The learned Advocate for the petitioner further submits that, the fresh tenders are issued during pendency of the writ petition. The offer given by the petitioner is better than the offer given by the two bidders pursuant to the fresh tender. In respect of the different items the petitioner is ready to quote rates as per the lowest one.

6. According to the learned Advocate for the petitioner, the respondent cannot subsequently give explanation. The administrative action of the respondent has to be judged by the reason in the decision itself. The learned Advocate relies on the judgment of the Apex Court in case of State of

Punjab Vs. Bandeeep Singh and others reported in **(2016) 1 SCC 724**.

7. The learned Additional Government Pleader submits that the written complaint was received by the Collector on 20.10.2018, after opening of the commercial bids. The Collector directed Additional Collector to conduct the enquiry. Pursuant to the complaint, the petitioner was not allotted with work order. The petitioner was the lowest bidder only for 3 items. The process of negotiation was conducted as per the purchase policy laid down in Government Resolution dated 01.12.2016, more particularly, paragraph no. 4.4.4.1. In the first round of negotiation, the petitioner reduced the rate of 17 items and so at the end of first round of negotiation the petitioner was lowest of 20 items of the 36 items of the tender. In the second round of negotiation the petitioner however reduced the rate of 10 items to the second lowest level of the itemwise bidder and finally six items were negotiated marginally. It was found that the

20 items in which the petitioner is the lowest amounted to 2.19% of total bill. The ten items negotiated up to the second lowest level amounted to 14.72% of the total bill. While other six marginally negotiated items constituted 83% of the total bill. 83% of the total bill comprises of these 6 items. The petitioner was never lowest nor the second lowest or the third lowest. The petitioner did not fairly negotiate all the items. In the interest of the State, the decision was taken to cancel the earlier tender process and fresh tender process is also initiated, commercial bids are also opened. The learned Additional Government Pleader relies on the judgment of the Apex Court in case of Uttar Pradesh Avas Evam Vikas Parishad and others Vs. Om Prakash Sharma reported in (2013) 5 SCC 182 and another judgment of the Apex Court in case of Meerut Development Authority Vs. Association of Management Studies and another reported in (2009) 6 SCC 171.

8. It is fact that the tender process pursuant

to which the petitioner had undertaken negotiation was cancelled and fresh tenders were issued. The fresh tenders issued contain different items also. For those different items the petitioner did not have any opportunity to quote his rates. The petitioner did not participate in the second tender process which is at the stage of finalisation.

9. A tender is an invitation to offer. A person responding pursuant to the tender gives his offer. It is for the authority to accept the offer. Unless the offer is accepted, the person, filling in the tender does not get an indefeasible right nor any right is crystalised in favour of the petitioner. No doubt, during the tender process the petitioner is entitled to be treated equally and the power of judicial review would only extend to the extent of overlooking absence of malafides and arbitrariness.

10. The respondent is the repository of the

public fund. The respondent will be the best judge as to how the public exchequer would be safe. The petitioner as well as the respondent have placed on record the comparative charts. It appears that pursuant to the tender filled in by the petitioner the petitioner was not even the third lowest in respect of the 6 items which constituted 83% of the bill and would involve recurring requirements and expenses. For accumulated rates of all the items the petitioner was lowest but if the running items are considered the petitioner was not even the third lowest and those running items constituted 83% of the total bill.

11. The decision was taken to cancel the tender process and to float the fresh tender. While doing so some extra items were also included in fresh tender which were not part of the earlier tender process. The petitioner as observed supra did not participate in the fresh tender process. Some of the items has also undergone change. In

the light of that, rates of the petitioner in the first tender would not be relevant.

12. As observed above, the State has to safeguard the public fund. The right was not crystalised in favour of the petitioner pursuant to the earlier tender process. It is in the public interest tender process was cancelled, keeping in view the State largesse.

13. It will not be open for judicial review to consider the rates of each and every items. The respondent is expert in the said field. The respondent has also given the rate chart. The offer of the petitioner would have caused loss to the public exchequer. The act of the respondent is bonafide and it does not smack of malafides nor the same can be termed as arbitrary.

14. In the light of above, we do not find any reason to interfere with the action of the respondent in cancelling the tender process.

15. Writ Petition is dismissed. No costs.

16. The learned Advocate for the petitioner seeks continuation of the interim relief for two (02) weeks. We do not find any reason to continue the interim relief. The prayer to continue the interim relief is refused.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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