

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION (STAMP) NO.30171 OF 2019

M/s.Amol Construction
through its proprietor
Shri Shatrughna Atmaram Meher

... Petitioner

Vs

1. The City & Industrial Development
Corporation Limited

2. Senior Transportation Engineer (MRTS & SP)
CIDCO Ltd., Belapur

3. Yojana Constructions, through its partner
Pratik Narayan Bhoir

... Respondents

4. Anita Construction, through its Proprietor
Akshay Jaywant Meher

5. Shakti Constructions, New Panvel

6. R.A. Madhavi, Navi Mumbai

Mr.Prabhanjan Gujar for the Petitioner

Mr.Nitin Gangal with Ashok Kadam and Prema Shukla for
Respondent Nos.1, 2 and 3

**CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATED: DECEMBER 20, 2019

P.C.:

1. Heard Mr.Gujar appearing for the petitioner and Mr.Gangal appearing for respondent Nos.1 and 2. Perused the petition and the annexures thereto.
2. The petitioner together with respondent Nos.3 to 6 placed offers and bids for allotment of the work of operation, management and maintainance of Pay and Park system at Nerul Railway Station Forecourt Area at Navi Mumbai.
3. The grievance in this petition is that the project work is awarded to respondent No.3. The tender notice, a copy of which is at exhibit A to the petition, contains the name of the work and also stipulates that there is a mandatory eligibility criteria. The mandatory eligibility criteria is work experience for the last 3 years with proof of such experience being produced.
4. The argument of Mr.Gujar is that respondent No.3 has no experience of operating and maintaining the Pay and Park system. Respondent No.3 is a contractor, carrying on public works and it could not have been awarded this contract. It lacks the requisite experience.

5. On a perusal of the tender notice, we are unable to agree with Mr.Gujar. He would like us to read into the condition “work experience for the last 3 years”, “work experience of operation of pay and park system for the last 3 years and proof in relation thereof”. We are not framing and prescribing any policy nor in the least, a tender notice. If the tender notice carries such a condition and both sides have understood it, to mean that the work experience need not necessarily be that of such operation, then, merely because the petitioner is unsuccessful, at its instance, the condition cannot be altered or interpreted in a manner suited to it.

6. Pertinently, in the Writ Petition itself, the petitioner says that the petitioner had, with such a condition being imposed, applied for and placed its bid. The petitioner says that it has vast experience. The petitioner is, at present, working on various sites of respondent No.1. The entire petition is silent with regard to the argument or contention now raised. If the petitioner has placed its bid despite existence of a condition imposed on the bidders and in the very words, then, it is admitted that no impediment was faced in applying or placing the bid and securing the contract. Merely because in this round or in this period of 3 years

commencing from 2016 to 2019, the petitioner is unsuccessful, does not mean that this condition is arbitrary, excessive, unreasonable or discriminatory in nature.

7. Pertinently, Mr.Gangal, on instructions, clarified that the condition, as is read in relation to the Kharghar slot and Belapur slot is concerned, the tender notice has been withdrawn. Therefore, there is no question of reading into the present condition anything that is found in the tender notice pertaining to Kharghar and Belapur slots.

8. We are of the firm view that we cannot substitute our opinion with that of the tendering authority. The tendering authority is the best judge of the nature of the work and the experience that is required to effectively discharge and carry out the same. Once we have found nothing arbitrary and discriminatory in the condition nor is there any material to show that the act of respondent Nos.1 and 2 suffers from malafides, this Writ Petition need not be entertained. It is accordingly dismissed. There would be no order as to costs.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)