

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

987 WRIT PETITION (STAMP) NO.12599 OF 2020

M/S S K TRANSLINES PVT LTD THROUGH ITS MANAGING DIRECTOR
VERSUS

THE GENERAL MANAGER, FOOD CORPORATION OF INDIA

Advocate for Petitioner : Mr R. N.Dhorde, Senior Advocate i/by Mr. Sikchi
Aditya N.

Advocate for the Respondent: Mr A R Borulkar

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 30th July, 2020

ORDER:

1. The respondent has rejected the tender of the petitioner and thereafter resorted to fresh tender process.

2. Mr. Dhorde, learned Senior Advocate appearing for the petitioner submits that pursuant to the tender notice published by the respondent for handling and transportation of food grains of the MSWC, Dhule, the petitioner participated in the tender process. The petitioner was qualified in technical bid. Financial bid of the petitioner was also opened. The petitioner's tender was lowest along with one Mr. Vishal Mohan Navale. They had quoted 141% . The authority thereafter invited bid amongst the two. The petitioner quoted 95%, whereas Mr. Vishal Navale quoted 98%. The petitioner was lowest bidder. To favour said Vishal Navale, the respondent cancelled the entire tender process and issued fresh tender. The same is not permissible.

3. Learned Senior Advocate relied on Clause 25.19 of the Manual of the Food Corporation of India to contend that in an ordinary circumstance,

it is not permissible to scrap the tender and to re-invite quotation and if the Regional Manager decides to scrap the tender, then reasons have to be given. The said reasons have to be based on strong grounds. No reasons are given in the order while rejecting the tender on technical ground. As reasons are not given, the same flouts the principles of natural justice. Once the respondent resorted to negotiations and called for the bids and the bid of the petitioner was thereafter lowest, the respondent were bound to accept the bid of the petitioner. Clause 25.21 would not be applicable in the present case. It was because, both tenderers have quoted same rates, the respondent has resorted to negotiations. Once the respondent resorts to negotiations and the petitioner's bid was found lowest, the respondent could not have proceeded for re-tendering. It was bound to finalize the tender process. Clause 25.21 and 25.19 have not been considered by the authority in correct perspective.

4. Mr. Borulkar, the learned counsel submits that there is no provision/covenant about the steps to be taken, if there is a tie. To avoid further complication, the re-tendering processing has been resorted to.

5. Scope of judicial review in contractual matters is in a limited compass. The tender is floated. The tender is not allotted to anyone and fresh tender has been resorted to. Admittedly, no concluded right was created in favour of any party. Clause 25.21 of the Manual provides that the negotiations should not be resorted to or entered into as a matter of routine but should be undertaken in exceptional cases with a valid lowest tender. In the present case, two tenderers had quoted same price. The

decision making authority concluded that negotiation would not be a proper procedure and have resorted to re-tendering and the fresh tender is also issued. We do not find the said process adopted to be arbitrary nor does it smack of favouritism.

6. Giving reasons is now considered to be third pillar of principles of natural justice. However, as has been submitted by the learned counsel for respondent No.1 that as it was a case of tie between two lowest tenderers and to avoid further complication, negotiation is avoided as per Clauses in the Manual. We do not deem it fit to exercise our writ jurisdiction on the said count.

7. This court, in normal circumstances, would not invoke the writ jurisdiction under Article 226 of the Constitution unless the action of the respondent is arbitrary, unreasonable or is malafide. In the present case, we do not find that the respondent is guilty of any such act. Coupled with above, the fresh tenders are already issued, the petitioner can participate in the fresh tender process.

8. In light of above, writ petition disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC