

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

WRIT PETITION NO.7580 OF 2020

**SAUDAGAR AGENCIES (CONTRACTOR),
THROUGH IT'S PROPRIETOR
VERSUS
THE UNION OF INDIA AND OTHERS**

Mr.V.D.Sapkal, Senior Advocate i/b. Mr.S.R.Sapkal, Mr.P.S.Dikle and
Mr.S.T.Chalikwar, Advocates for petitioner

Mr.A.D.Soman, Advocate h/f. Mr.D.V.Soman, Advocate for respondent
no.2

**CORAM : S.V.GANGAPURWALA
AND
R.G. AVACHAT, JJ.**

DATE : NOVEMBER 04, 2020

PER COURT :-

The petitioner had filled-in a tender pursuant to the advertisement for collection of fees and brokerage in the premises at weekly market of Aurangabad Cantonment Board. The tender of respondent no.3 is accepted. The same is assailed.

2. Mr.Sapkal, learned Senior Counsel appearing for the petitioner, submits that for the first time, respondent no.2 had issued the tender on 24.01.2020 for collection of fees and brokerage in the weekly market of Aurangabad Cantonment Board. Said tender was recalled

for six times. Eventually, for the seventh time, the tender notice was published on 17.10.2020. Two bids were received that of the petitioner and respondent no.3. Both the bidders were qualified, as approved by the Technical Bid Evaluation Committee. He submits that the technical bid of the petitioner has been illegally rejected on the ground of outstanding dues. Learned Senior Counsel submits that the outstanding dues, as claimed by respondent no.2, is in respect of the work allotted to the petitioner by respondent no.2 relating to toll collection. The dispute is pending before the Arbitrator. Interim protection has been granted by the District Court under Section 9 of the Arbitration and Conciliation Act, 1996 and therefore, respondent no.2 cannot contend that the petitioner is a defaulter. Respondent no.2 is mixing the issues. The present tender is relating to the weekly market and has nothing to do with collection of toll. According to learned Senior Counsel, the petitioner is not a defaulter, even as far as the work of toll collection is concerned. As the dispute is *sub judice* before the Arbitrator, the petitioner cannot be said to be a defaulter.

3. Learned Senior Counsel for the petitioner further submits that when the tender was issued for the third time, the petitioner was the

only qualified bidder, and his bid was approved by the Technical Bid Evaluation Committee. The tender ought to have been allotted to the petitioner as the petitioner was the only qualified bidder. He submits that in the instant case, there are only two qualified bidders. Arbitrariness is writ large from the action of respondent no.2. Learned Senior Counsel submits that same treatment has to be given to all the parties. Respondent no.2 is acting arbitrarily. He further submits that respondent no.3 was not technically qualified. He had not submitted attested copies of PAN card and still, his tender has been accepted by showing him favoritism by respondent no.2.

4. Mr.Soman, learned Counsel appearing for respondent no.2, submits that Clause 11 of the tender document clearly specifies that the defaulters in paying dues of the Cantonment Board and blood relations of defaulters/Board Members/employees shall not be eligible to bid. He submits that the petitioner is a defaulter. The petitioner had issued eight cheques for discharging his liability in respect of the contract of toll. All the eight cheques are dishonored. Respondent no.2 is proposing to initiate proceedings under Section 138 of the Negotiable Instruments Act. He, therefore, submits that the petitioner was disqualified.

5. In the matters of tender, some leverage is to be given to the persons floating tenders. The Principal is the best person to judge the eligibility. Clause 11 of the tender reads thus:-

*11. **REJECTION OF OFFER:** Cantonment Board, Aurangabad/Chief Executive Officer reserves the right to reject any or all offers without assigning any reason thereof. The defaulters in paying dues of the Cantonment Board and blood relations of defaulters/Board members/employees shall not be considered. All bidders are personally responsible for informing the same, failing to inform to office action may be initiated under relevant sections of the Cantonments Act, 2006.*

6. According to respondent no.2, the petitioner is defaulter in payment of dues. Eight cheques are dishonored and legal proceedings are sought to be initiated in that regard. According to the petitioner, the dispute is *sub-judice* before the Arbitrator and interim order has been passed by the Arbitrator.

7. Be that as it may, the dispute pertains between the parties. The Principal would be the best Judge to consider, whether the confidence can be reposed on the tenderer. It is further submitted that work order has already been issued in favour of respondent no.3 on 02.11.2020. It is not necessary that in all cases, the best

bidder has to be allotted the contract. Other antecedents and factors are also required to be considered.

8. Considering all the aforesaid factors cumulatively, we are not inclined to entertain the Writ Petition. The Writ Petition is dismissed. No costs.

[R.G. AVACHAT, J.]
kbp

[S.V.GANGAPURWALA, J.]