

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

**WRIT PETITION NO. 11002 OF 2019
WITH CIVIL APPLICATION NO. 12173 OF 2019**

M/s Mayur Electricals Through
its Proprietor

.. Petitioner

Versus

Maharashtra State Electricity
Distribution Company Ltd. Through
Its Executive Engineer

.. Respondent

Mr. D. V. Godbole, Advocate i/by Rahul S. Pawar & Bharatkumar Nukte,
Advocate for the Petitioner.

Mr. Anil S. Bajaj, Advocate for Sole Respondent.

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

DATED : 02nd MARCH, 2020.

PER COURT:-

. The tender of the petitioner for empanelment has been rejected. The respondents floated the tender for empanelment of agencies for infrastructure development, for release of new service connections in Nandurbar division for three years. The said tender notice was issued on 13.06.2019.

2. The bid of the petitioner is rejected by one line order.

3. The learned counsel for the petitioner strenuously contends that a days deviation was only allowed to the petitioner. It was not possible for the petitioner within a day to bring all the necessary certificates which the respondent required in a particular format. According to the learned counsel, the petitioner has placed on record the documents of the work done by the petitioner with the respondent themselves. The documents depict the volume of the work, the quantum of the work. In the light of that, it was erroneous on the part of the respondent to reject the tender document. The learned counsel further submits that considering the clauses in the tender document the petitioner qualifies the technical criteria. All these documents produced by the petitioner of the work done by the petitioner are issued by the respondent and the railways. There was no reason for the respondent to ignore the said documents. According to the learned counsel the petitioner has placed on record the documents which would substantiate the case of the petitioner and it also clarifies the work done by the petitioner of more than 10 Km. of HT / LT work. The respondent be directed to consider the same.

4. Mr. Bajaj, learned counsel for the sole respondent submits that the documents produced by the petitioner along with the tender did not specify the length of the work done by the petitioner. The same was

necessary condition. Even one day was provided to the petitioner to produce certificate though it was not specified in the tender. The petitioner failed to produce the same.

5. In commercial matters the jurisdiction of this Court under article 226 of the Constitution of India would be in a narrow campus. This Court would be more concerned with due adherence to the decision making process. In contractual / tender matters some liberty is given to the authority issuing tender.

6. The technical qualifications are detailed in the tender document. The same reads thus :-

Eligibility and qualifying criteria :

The bidder shall meet following minimum eligibility criteria for participation in the bid.

(a) Technical Qualification :

(I) The bidder should be a licensed electrical Contractor having minimum 3 year experience in Design, Supply, Erection, Testing, Commissioning of electrical distribution & sub-transmission infrastructure works, which includes 33/22/11kV HT overhead and underground lines, LT overhead and underground lines, Distribution Transformer center in MSEDCL / any state utility including Distribution Franchise (DF)/ Public Sector undertaking like MIDC/ PWD/ Municipal Corporations/ Councils/ CIDCO/ MHADA, etc.

(II) For HT / LT overhead and underground line works, the bidder should have specific experience of execution of full turnkey or partial turnkey contracts of Minimum 25 KM HT / LT Overhead line and 10 KM of HT / LT underground cable of route length. And for Distribution Transformer, the bidder should have an experience of execution of full turnkey or partial turnkey contracts of Minimum 10 DTCs.

All the components of electrical works mentioned above should be in successful operation for at least one (1) year as on date of submission of bid.

(iii) Work experience of the bidder as per above shall be considered only if the works have been executed under Govt./semi-Govt./autonomous body of Central/State Govt./Electricity Power Utility/Public works, Distribution franchisee appointed by MSEDCL and under Dedicated Distribution Facility (DDF) scheme work approved by MSEDCL /MSETCL. The work experience under DDF scheme will be considered only if approved by Competent Authority in MSEDCL & MSETCL i.e. concerned Executive Engineer /Superintending Engineer or concerned Superintending Engineer of MSETCL.

7. Part I of the technical bid specifies that the bidder shall submit relevant certificate to demonstrate the financial / technical capabilities and eligibility criteria prescribed under the tender document.

8. The tender document did not contain a clause that time would be granted to the bidder to rectify the defects.

9. Reading the clause of eligibility and qualifying criteria, it is manifest that for the HT / LT overhead and underground line works, the bidder should have specific experience of execution of full turnkey or partial turnkey contracts of minimum 25 Km. HT/ LT overhead line and 10 Km. of HT/ LT underground cable of route length.

10. In none of the documents produced by the petitioner, it can be gathered that the petitioner has executed full turnkey or partial turnkey contracts of minimum of 25 Km. HT/ LT overhead line and 10 Km. of HT/ LT underground cable of route length with any Government / semi Government / autonomous body of Central / State Government / Electricity Power Utility / Public works appointed by MSEDCL and / or under Dedicated Distribution Facility (DDF) scheme work approved by MSEDCL / MSETCL.

11. This Court in exercise of its writ jurisdiction would not tamper with the conditions of the tender. That would tantamount to writing the terms of tender which is not permissible.

12. It is also not the case of the petitioner that the petitioner has been discriminated. It is not the case of petitioner that other persons have been granted more time to cure the deficiencies and the petitioner was not given such time.

13. In the light of the above, no case for interference is made out.

Writ petition is disposed of. No costs.

14. In view of the disposal of the writ petition, civil application also stands disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

RS.B.