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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.251 OF 2020

1. Unistone Panels Pvt. Ltd., Having its office at Ground Floor, S.No.133/5, Viraj Warehouse, Saswad Road, Opp. Zooms Hotel, Bhandale Wast, Uruli Devachi, Tal. Haveli, Dist. Pune. …Petitioners

2. Lalit Mittal
Aged 42 Yrs, Having its address at 162, 1st Floor, Anand Vihar Pitam Pura, Delhi – 110 034.

Vs.

1. Maharashtra State Road Transport Corporation., Stores and Purchase Department, Jhangir Boman Beharam Marg, Mumbai Central, Mumbai 400 008. …Respondents

2. Keybond Industries LLP, 17, Super House, Amar Ind. Estate, Opp. Federal Bank, CST Road, Kalina, Santacruz (East), Mumbai, Maharashtra 400 098.

Mr. Zerick Dastur with Ms. Dhawani Mehta and Ms. Tanvi Gaitonde i/b. DM Chambers for the Petitioners.
Mr. Nitesh Bhutekar for Respondent No.1.
Mr. Mukesh M. Vashi, Senior Counsel i/b. A. Parab for Respondent No.2.

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

<u>JUDGMENT RESERVED ON</u> **11TH FEBRUARY, 2020.**

<u>JUDGMENT PRONOUNCED ON</u> **14TH FEBRUARY, 2020.**

<u>J U D G M E N T</u> (Per R.I. Chagla, J.)

1. Rule. Rule made returnable forthwith. Heard by consent.

2. This Writ Petition under Article 226 of the Constitution of India seeks a Writ of Certiorari for quashing and setting aside the

decision of Respondent No.1 to reject the bid of the Petitioner for 50% business pursuant to tender dated 22nd January, 2019 for "Fire Resistant (FR) Grade Printed Aluminum Composite Panel (ACP Sheets) for Interior Panelling of M.S. Buses" (for short "***ACP Sheets***"). This Writ Petition has further sought for a Writ of Certiorari for quashing and setting aside the award of the contract / tender given by Respondent No.1 to Respondent No.2 for 50% business. A Writ of Mandamus has also been sought directing Respondent No.1 to award the contract of the tender for 50% business to the Petitioner being L-2 bidder having matched the net price of L1.

3. The Petitioner No.1 is a Private Limited Company incorporated under the Indian Companies Act, 1956 and is engaged in the business of manufacturing ACP Sheets. The Petitioner No.2 is a Director of Petitioner No.1 as well as its authorized representative. Respondent No.1 is the Maharashtra State Road Transport Corporation (for short "***MSRTC***") which is a State run bus service of Maharashtra established by the State Government of Maharashtra as per the provision of Section 3 of the Road Transport Corporation Act, 1950. The Respondent No.2 is a Limited Liability Partnership firm incorporated on 17th July, 2017. Respondent No.2 deals with the business of manufacturing metal products.

4. Respondent No.1-MSRTC had issued a tender dated 22nd January, 2019 and invited bids in respect of ACP Sheets which as recorded in the tender was required for maintenance purpose, to keep the vehicle in good condition for the comfort and safety of passenger. The Petitioners in response submitted its bid dated 22nd January, 2019.

5. In clause E sub clause A at page 21 of the Tender which is material and reproduced in the Petition, it is stipulated that there is a preference given to the tenderers in Maharashtra State for business allocation. After comparing the rates as mentioned therein per number rates, if the bid of a tenderer from outside Maharashtra is L-1, then he will be allotted 50% business and the balance 50% business will be allotted to the tenderer from Maharashtra State provided he agrees to supply the same quality material at L-1 bid net rate per number. It is further stipulated that if the tenderer from Maharashtra State does not agree to supply the same quality material at L-1 bid or net rate per number then 100% business may allotted to the tenderer from outside Maharashtra State. It is further provided that sometimes the out of state tenderer are specifying their address within Maharashtra, in such case, if he pays i.e. (SGST + CGST) then only, he shall be treated as tenderer from Maharashtra State for allotment of business under the tender.

6. It is stated in the Petition that Petitioner No.1 regularly deals in supplying ACP Sheets to various entities. The Petitioner No.1 has its principal place of business at Ground Floor, S.No.133 /5, Viraj Warehouse, Saswad Road, Opp. Zooms Hotel, Bhandale Waste, Uruli Devachi, Tal Haveli, Dist. Pune, Maharashtra and holds a GST registration certificate bearing No.27 AAECB468 8C1ZN. It is then stated that the Petitioner No.1 shall be treated as a tenderer from Maharashtra State.

7. It appears that the Company Alstrong Enterprises India Pvt. Ltd's. bid was found to be L-1 and since it was from out of Maharashtra, it was allotted 50% business. It is stated in the Petition that the MSRTC for the balance 50% business approached the Petitioner No.1 being the L-2 bidder. The MSRTC addressed an e-mail on 13th March, 2019 to the Petitioner No.1 with regard to the Tender stating that the net price of L-1 tenderer against E-Tender for ACP sheets for interior panel is Rs.2756.48 per number and further stated that the Petitioner No.1 is requested to confirm its willingness to match the above L-1 net rate by return e-mail immediately. On 14th March, 2019, the Petitioner No.1 responded to the MSRTC email dated 13th March, 2019 confirming its willingness to match the L-1 net rate and gave the billing pattern towards matching of the rates for the information of the MSRTC.

8. It is stated in the Petition that the Petitioner constantly followed up with Respondent No.1 enquiring about the further formalities to be completed for signing the contract and they were informed by the MSRTC that since elections are ongoing, the same shall take place after the election process is completed in May, 2019.

9. It is then stated that the Petitioner No.1 placed orders on 8th May, 2019 and 20th July, 2019 for initial material required as per the Tender. The proforma invoices along with Tax Invoice are stated to be lying idle with the Petitioner and are annexed at Exhibit E to the Petition.

10. The Petitioners have then stated that by keeping close watch on the MSRTC's website / on line portal had placed its hands over the Annexure C uploaded on the MSRTC's online portal and it was amply clear from that too that there were a total of eight bidders that participated in the Tender and from the price bid mentioned therein Alstrong Enterprises India Pvt. Ltd. is L-1 and Petitioner No.1 is L-2. However, it is stated that the website / on line portal of the MSRTC on 29th August, 2019 did not have any information with regard to the award of contract.

11. It is thereafter stated in the Petition that the Petitioner No.1 was compelled to issue an e-mail to the MSRTC on 4th September, 2019 which referred to the previous emails exchanged

between them and the further steps taken by the Petitioner No.1. The MSRTC was requested to let the Petitioner No.1 know as to when the formalities could be completed with regard to the Tender including issuance of letter of award and signing of the contract. However, the Respondent No.2 failed to intimate to the Petitioners regarding the signing of the contract despite several followups from the Petitioners end.

12. It is then stated that recently it came to the Petitioners knowledge that the MSRTC had arbitrarily and illegally awarded the Tender to Respondent No.2 instead of Petitioner No.1. This is inspite of Petitioner No.1 accepting the MSRTC's offer to match the net price of the L-1 bidder. However, no such information was reflected on the MSRTC's e-portal nor did the MSRTC inform the Petitioner No.1 of the same or the reasons for rejection of the Petitioner No.1's bid. Being aggrieved by the rejection of the bid of the Petitioner No.1 by the MSRTC without assigning any reasons, the Petitioners have filed the present Petition.

13. An Affidavit in Reply has been filed by Shri Dilip Haribhau Chaudhari, Senior Stores Officer, MSRTC. In the said Affidavit in Reply which is dated 10th February, 2020, it is stated that, the present Petition has been filed at a much belated stage. The Rate Contract No.72/2019-20 was awarded to Respondent No.2 on 31st August, 2019 and accordingly the tender work was allotted. The Petition is filed only on 15th January, 2020. It is further stated

that after the issuance of the Rate Contract, the Respondent No.2 immediately started supplying of material as per the terms and conditions in the Tender. As per clause (X) of the Terms, the Contract is for one year which starts from 7th August, 2019. Already six months period of the contract has been completed. Thus, the Petition is not maintainable and the prayers in the Petition are infructuous.

14. It is further stated in the said Affidavit in Reply that it is clear from the wording of the Tender that preference is to be given to the tenderers from Maharashtra State for allocation. It is further stated that the manufacturers from the State of Maharashtra are given preference over the manufacturers from the other states. It is stated that Clause-A(iv) of the Tender specifically mentions the words “sometimes, the out of Maharashtra State tenderers are specifying their address within Maharashtra, in such case, if he pays the (SGST + CGST) then only, he shall be treated as tenderer from the Maharashtra State for allotment of business as above”. Thus, if the manufacturer from the State of Maharashtra is not available then the latter can be given opportunity. It is stated that the Petitioner No.1 is not manufacturing the material in the State of Maharashtra whereas the Respondent No.2 is manufacturing the material in Maharashtra which gives promotion to the employment within the State. Moreover, as per clause – A (v) of the tender, the MSRTC reserves its right to decide allotment of business to more than one source in its own interest. The

Purchase Committee has the full right to decide allocation of business.

15. The emails exchanged between the MSRTC and Petitioner No.1 are then referred to and it is stated that nowhere has it been mentioned that the Tender was allotted or it was approved in favour of the Petitioner. The Respondent No.2 who is the L4 bidder is having its manufacturing Plant in Maharashtra and L2 and L3 bidders were not having their manufacturing unit in Maharashtra. The correspondence addressed by Respondent No.2 to the MSRTC has been referred wherein it is stated that Respondent No. 2 is having a Plant under make in Maharashtra initiative whereas other bidders are having only their branch offices for trade in Maharashtra. A decision was thus taken by the MSRTC to provide 50% business subject to L4 matching the rates of L1 in view of the policy determined by the Government of Maharashtra in policy book dated 1st December, 2016, clause 3.1.2.8. Having so matched the rates of L1, work was allotted by using the discretion of MSRTC to Respondent No.2. The bid of Respondent No.2 being considered as the most substantial, responsive and most advantageous Tender from the point of view of MSRTC and accordingly the Tender was awarded. It is then stated that the MSRTC is under no obligation to accept the lowest or any other offer received in respect of the Tender notice and that the MSRTC shall be entitled to reject a bad offer without assigning any reasons.

16. The said Affidavit in Reply further refers to tender condition clause No.O (Part I – Terms and Conditions) which provides that any dispute that arises shall be settled by way of mediation at the level of Vice Chairman and Managing Director, MSRTC, Mumbai. The Petitioners without availing the alternate remedy has approached this Court and accordingly for the said reason the Petition be dismissed.

17. Mr. Zerick Dastur, the learned Counsel for the Petitioners has submitted that the decision taken by the MSRTC to reject the bid of the Petitioner No.1 despite the Petitioner No.1 accepting the offer of the MSRTC to match the L-1 price is arbitrary, illegal and violative of the Petitioners fundamental rights under the Constitution of India. He has submitted that the rejection of the Petitioner No.1's bid by the MSRTC was without assigning reasons and the failure to enter into the contract with the Petitioner shows that the same appears to have been done by the MSRTC with ulterior motive and thus is illegal and arbitrary. There has been complete lack of transparency and bona fides on the part of the MSRTC. He has submitted that it is clear from the terms and conditions of the Tender that the Petitioner No.1's bid being the L-2 bid was to be considered and that this was the understanding of the MSRTC who had called upon the Petitioner No.1 to match the price of the L1 tenderer and upon the Petitioner No.1 having accepted the same, the MSRTC was obligated to enter into the contract with the Petitioner No.1. The Tender also

contemplated two stage bids viz. technical and commercial. The Petitioner No.1 had satisfied the technical conditions and the pre-qualification criteria thereunder. Upon so satisfying the technical conditions and being successful in the technical bid, the commercial bid of the Petitioner should have received due consideration by the MSRTC. The Petitioner No.1's bid was complete in all respects and conformed to the tender terms and conditions, bid evaluation criteria, tender specifications in toto and the failure of the MSRTC in taking any further steps for signing the contract with the Petitioner No.1 is illegal.

18. He has submitted that the Petitioner No.1 has vested right to be awarded 50% business in terms of Clause E (A) (ii) of Part II titled as Terms and Conditions for the Tender. He has submitted that the MSRTC having offered Petitioner No.1 to match the price of L1 and Petitioner No.1 having agreed and accepted the same, the Petitioner No.1 is entitled to be awarded 50% business under the Terms and Conditions of the Tender. The failure on the part of the MSRTC to assign the contract to Petitioner No.1 and the arbitrarily awarding of contract to Respondent No.2 is discriminatory and smacks of legal malice and shows that the entire Tender process has been stage managed to deny a lawful opportunity to the Petitioners. He has submitted that it is well settled that consideration of the Tenders received and the procedure to be followed in the matter of acceptance of the Tender should be transparent, fair and open. The MSRTC by failing to

conduct a fair and transparent tender process had deprived the Petitioners of their lawful rights. He has submitted that the conduct of the MSRTC which suffers from arbitrariness and lack of transparency has severely affected the Petitioners' fundamental rights under Article 14 and 19(1)(g) of the Constitution of India. He has relied upon the CVC circulars dated 29th April, 2014 and 11th September, 2003 to contend that that these circulars required the tendering authority to conduct the tender process in a transparent and fair manner. Further the CVC Officer Order No.15/3/05 dated 24th March, 2005 requires the tendering authority to record clear and logical reasons for any action of rejection / recall of tenders. He has also relied upon Clause (B) titled Envelop No. 2 (Commercial Bid) at page 5 of the Tender wherein it is provided that the disqualified bidders will also be communicated with reasons for rejection of technical bid. The MSRTC has failed to even provide reasons for the rejection of the Petitioner No.1's bid.

19. In further support of his contention that the Respondent No.1 had rejected the Petitioners bid without assigning any reason, he has relied upon the judgment of the Supreme Court in ***State of Punjab Vs. Bandeep Singh and Ors.[1].*** The Supreme Court in that decision held that, every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. He has

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1 (2016) 1 Supreme Court Cases 724.

submitted that the MSRTC has thus acted in violation of its own terms of the Tender and that the conduct of the MSRTC violates the Wednesbury principles of reasonableness and natural justice. He has accordingly submitted that the relief sought for under the Petition be granted.

20. The above submissions on behalf of the Petitioners have been opposed by Mr. Nitesh Bhutekar, the learned Counsel for the MSRTC and Mr. Mukesh Vashi, the learned Senior Counsel for Respondent No.2. Mr. Mukesh Vashi, has referred to the Tender and in particular Annexure A to the Tender which provides for the pre qualification criteria and which includes as one of the criteria manufacturer for the tendered item. He has been submitted that the tender did contemplate that where the tenderer was a manufacturer from the State of Maharashtra, he would be given a preference over the manufacturers from other States. He has submitted that the Petitioner No.1 is not a manufacturer in the State of Maharashtra and in fact has its manufacturing unit in Raipur. He has submitted that if the manufacturer from the State of Maharashtra is not available then only a tenderer who is having SGST and CGST registered in the State of Maharashtra, can be considered. This is provided for in Clause E (A) (iv) of part II of the Terms and Conditions of the Tender. He has accordingly submitted that the MSRTC being the manufacturer in the State of Maharashtra has been validly awarded 50% business under the Tender.

21. This submission is supported by Mr. Bhutekar. He has further submitted that the Petition is belated having been filed only on 15th January, 2020 despite the contract being given to the Respondent No.2 on 31st August, 2019 and the contract being performed by supply of the material by Respondent No. 2 for nearly six months as per the terms and conditions of the Tender. Thus, the Petition suffers from gross delay and laches and should not be entertained by this Court.

22. Having considered the rival submissions, it would be necessary to extract the relevant terms and conditions of the Tender. This is provided in Part II titled as the Terms and Conditions for the Tender. Clause E thereof reads as under:-

> ***Award of Business :-***
>
> ***1) No of Sources:- The business will be allotted to maximum two sources depending upon availability.***
>
> ***2. It will be decided on the basis of net rate inclusive of GST for price quoted for ACP sheet per number.***
>
> ***3. The L-2 and above bidders will have to match their nett rate per number with L-1 bidder nett rate per number for allotment of business to them.***
>
> ***4. In the case L-1 bidder is new to the Corporation for the tendered item, then restricted business upto 40% to such bidder will be allotted.***
>
> ***5. If L-2 and above bidder does not match the nett rate per number with L-1 bidder net rate per***

number, then 100% business may be allotted to L-1 bidder.

6. The business will be allotted within two bidders, subject to above condition in following formula / percentage on the basis of the % rate difference of their tender nett per number with L-1 bidder.

L-2 rate % above L-1 %	Nett Rate difference	
If rate is same	L-1	L-2
If rate difference up to 1%	50%	50%
If rate difference upto 1% to 5%	55%	45%
If rate difference upto 5% to 10%	70%	30%
If rate difference upto 10% to 15%	80%	20%
If rate difference upto 15% to 20%	85%	15%
If rate difference upto 20%	90%	10%
If rate difference upto 1% to 5%	100%	Nil

7. MSRTC reserves the right to allot the business to one or two sources in its own interest irrespective of the above terms.

A. Preference to the tenderers in Maharashtra State for business allocation:-

i) Rate consideration for deciding L-1 bid -

a) Other State supplier Rates – The net rate per number quoted by the tenderer inclusive of IGST will be considered.

b) Maharashtra State Suppliers Rate – The net rate per number quoted by the tenderer inclusive of Gst (i.e. SGST + CGST) will be considered.

ii) After comparing the rates as above per number, if the bid of a tenderer from out of Maharashtra is L-1, then he will be allotted 50% business and balance 50% business will be allotted to tenderer from

> ***Maharashtra State, provided he agrees to supply the same quality material at L-1 bid net rate per number.***
>
> ***Iii) If the tenderer from Maharashtra State does not agree to supply as (ii) above, then 100% business may be allotted to the tenderer from out of Maharashtra State.***
>
> ***iv) Sometimes, the out of State tenderer are specifying their address within Maharashtra, in such case, if he pays the (SGST + CGST), then only, he shall be treated as tenderer from Maharashtra State for allotment of business as above.***
>
> ***v) MSRTC reserves the right to allot the business to more than one source in its own interest irrespective of the above terms. The purchase committee has full rights to issue / decide allocation of business.***

23. It is clear from the above Clause that preference is given to the tenderers in the Maharashtra State for business allocation. Further, the MSRTC has reserved its right to allot the business to one or two sources in its own interest irrespective of the terms mentioned. The rate consideration for deciding L-1 bid has been provided in (A) Sub-Clause (i) and thereafter in Sub-Clause (ii), it is stated that after comparing the rates as above per number, if the bid of a tenderer form out of Maharashtra is L-1 then he will be allotted 50% business and balance 50% business will be allotted to the tenderer from Maharashtra State, provided he agrees to supply the same quality material at L-1 bid net rate per number. Then in Sub-Clause (iii) it is provided that if the tenderer from the Maharashtra State does not agree to supply as mentioned in Sub-Clause (ii), then 100% business may be allotted to the tenderer

from out of Maharashtra State. In Sub-Clause (iv), it is provided that, sometimes the out of State tenderer specifies the address within Maharashtra. It is in such cases that the tenderers bid will be considered and he shall be treated as tenderer from Maharashtra State for allotment of business, if he pays (SGST + CGST). Then in sub clause (v), it is provided that the MSRTC reserves it rights to allot the business to more than one source in its own interest irrespective of the above terms. Further, the Purchase Committee has full rights to issue / decide allocation of business. It is thus clear from the above Clause E of Part II of the Terms and Conditions of the Tender, that the MSRTC has reserved its right to exercise its choice of allotting its business to a source which would be in its own interest and preference being given to the tenderers in Maharashtra State. Further from Annexure A to the tender it is also clear that one of the pre qualification criteria which is required to be fulfilled by the tenderer is that it should be a manufacturer for the tendered item having valid Registration Certificate from State/Central Government. The Tender also comprised of two stage bids one being a technical bid and the other a commercial bid. Thus, the commercial Tender would necessarily have to consider the criteria in Annexure A including as to whether the Petitioner No. 1 is a manufacturer in the State.

24. The MSRTC has been established by the Government of Maharashtra as per the provision of Section 3 of the Road

Transport Corporation Act, 1950. Thus, being a State run bus service, it is required to issue Tenders which would be in the interest of the State and would require to be satisfied that the tenderer possesses the criteria which would benefit the State in providing such services. One such criteria being that the tenderer is a manufacturer of ACP in respect of which the Tender has been issued in the State. Hence, a necessarily preference has been given to tenderers in Maharashtra State for business allocation under the Tender. Petitioner No. 1 admittedly is not a manufacturer in the State of Maharashtra. Accordingly, Petitioner No. 1 had sought to be considered as tenderer in Maharashtra State for allotment of business only on the premise that it pays the SGST + CGST.

25. The justification for the impugned decision has been provided by the MSRTC in its Affidavit in Reply viz. that only if the manufacturer from the State of Maharashtra is not available then an opportunity can be given to the tenderer such as the Petitioner No.1, who is having SGST + CGST registration in State of Maharashtra.

26. The Petition has been filed at a much belated stage i.e. on 15th January, 2020. This considering that the tender was awarded to Respondent No.2 on 31st August, 2019 and Respondent No.2 having already started to supply the material as per terms and conditions in the Tender. Further, considering that it is stated that

clause (x) of the terms specifies that the contract is for one year commencing from 7th August, 2019 and that six months period of contract has already been completed. It would thus not be appropriate to disturb the Tender awarded to Respondent No.2. This is without prejudice to our finding that there is no merit in the submissions on behalf of the Petitioners.

27. The Petitioners have filed this Petition on the premise that they have a lawful right to be awarded 50% business under the Tender and that the conduct of MSRTC is arbitrary and affects the Petitioners fundamental rights viz. Article 19(1)(g) of the Constitution. The Petitioners cannot claim to have any such vested legal right to be awarded 50% business by the MSRTC. It has been made clear in the Tender that MSRTC reserves its right to allot the business to more than one source in its own interest irrespective of the terms in the Tender. The Purchase Committee further has full rights to issue / decide the allocation of business. It is well settled that the tenderer cannot claim a lawful right to be awarded the Tender. In the Purchase policy issued by the State of Maharashtra and which has been referred to in the Affidavit in Reply of Respondent No.1, it is stated that clause No.3.1.2.8 provides that the manufacturers in Maharashtra be given priority over manufacturers such as Petitioner No.1 who are having only GST number in Maharashtra. It is not open for this Court to interfere with the policy of the State and particularly where it is not even the Petitioner’s case that the policy of the State is in any

manner arbitrary or unreasonable. It is for the MSRTC to award the contract to the bidder whose bid has been determined to be substantial, responsive and most advantageous Tender from its point of view. It has taken a decision in awarding the 50% business to Respondent No.2 being L-4 by considering that Respondent No.2 has a manufacturing unit in Maharashtra, whereas L-2 (Petitioner No.1) and L-3 bidders were not having the manufacturing unit in Maharashtra. We cannot fault such decision taken by the MSRTC, which is in terms of its Tender i.e. providing for a preference to the tenderers in Maharashtra State for business allocation. Thus, the Petitioners cannot claim to have any vested legal right to be awarded 50% business under the Tender and / or claim that the fundamental right of the Petitioners under Article 19(1) (g) of the Constitution has been affected by the decision of impugned MSRTC in not awarding the 50% business to the Petitioner No.1.

28. With regard to the submission of the Petitioner No.1 that the MSRTC having failed to give any reason with regard to Petitioner No.1 bid not being accepted, its decision would be vitiated, we find no merit in this submission particularly in the given facts and circumstances of the present case. MSRTC had awarded 50% business to the Tenderer L-1, who was from out of Maharashtra. Under the terms and conditions of the Tender as provided in Part II Clause E (A) (ii) of the tender, the balance 50% would be allotted to the tenderer from the State of Maharashtra provided it

agreed to supply the same quality material at L-1 bid net rate per number. MSRTC has considered Respondent No.2, L-4 bidder to be awarded the Tender for balance 50% business considering that it was a manufacturer within the State of Maharashtra. Thus, the MSRTC had not considered Petitioner No.1 (L-2) as well as the L-3 bidders as they were only having branch offices in Maharashtra and were not having their manufacturing units in Maharashtra. MSRTC thus acted in conformity with the terms and conditions of the Tender in granting the balance 50% business to Respondent No.2. The Petitioners have placed reliance upon the correspondence addressed by Respondent No.1 to Petitioner No.1 calling upon them to match price of L-1 tenderer. Merely, addressing correspondence calling upon the Petitioner No.1 to do so and that being accepted would not be sufficient for Petitioner No.1 to claim that their commercial bid had been accepted and they have a legal right to balance 50% business to be awarded under the Tender. Thus, there was no requirement for any reasoned decision being given by the MSRTC particularly, when Petitioner No.1 was not considered to be the Tenderer from the State of Maharashtra for being awarded the business.

29. In the decision relied upon by the Petitioners viz. ***State of Punjab (Supra)***, the Supreme Court had considered facts which were entirely different from that in the present case. In that case one Mr. Walia had orally complained that the successful bidders had promised to associate him in their venture as their partner, but

had thereafter resiled from this commitment. Without conveying to the Respondents the reasons for not accepting their bids, being the highest offer received in the course of the auction process, a decision had been taken by the Appellant to re-auction the two properties. The case was referred to the Director, Industries and Commerce who opined that a re-auction should be conducted as the two subject bids were only marginally higher than the reserve price. This decision had failed to take into consideration those instances where similar bids i.e. bids which are marginally higher than the reserve price; had been accepted. It is in this context that the Supreme Court has held that the decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It has been held that the High Court had rightly concluded that no sustainable justification and rationalization was recorded in writing at the relevant time for ordering the re-auction of only the two subject properties. In that case the Supreme Court also held that, the decision for conducting a fresh auction had been taken when no evidence has been placed on record to support this contention that the property has fetched too low a bid when compared to the prevailing market price. In the present case the Petitioner No.1 is not the successful bidder and its bid has not been considered since it does not have a manufacturing unit in Maharashtra. Respondent No.2 having a manufacturing unit in Maharashtra has been considered to be the successful bidder in accordance with

State Policy and which is in the best interest of the State. Considering that, the facts in the case before the Supreme Court is entirely distinguishable than the facts in the present case, the reliance on the decision of the Supreme Court is entirely misplaced.

30. We accordingly, find no merit in the Writ Petition and the Writ Petition is accordingly dismissed with no order as to costs.

(R. I. CHAGLA J.) **(S.C. DHARMADHIKARI, J.)**