

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

919 WRIT PETITION NO.7019 OF 2021

SYED ISMAIL SYED KARIM
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. U. B. Deshmukh, h/f Mr. Mayur V. Salunke.

AGP for Respondents: Mr. P. N. Kutti.
...

CORAM : **S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 30th June, 2021.

P.C.:

. The petitioner assails clause 3.4.4 (2) of the tender. The said clause requires a tenderer to provide scanned copy of sketch of RMC plant showing location of the plant and distance from the farthest point of work to the RMC plant signed by the bidder himself. It further states that the farthest distance for the RMC plant shall be within 20 kilometers so as to control setting time and segregation of the concrete as per specification before laying on site.

2 Mr. Deshmukh, learned counsel submits that the petitioner has taken a land on lease within a distance of 6 kilometers from the location. The petitioner has also all the machineries with him and the petitioner can install the plant if the tender is allotted to the petitioner within 72 hours. The condition imposed in the tender is unreasonable

and a colourable exercise of the power and function of the authority. The learned counsel further submits that in general tender of the public works department, there is an exception provided that a demand draft of Rs.5,00,000/- as additional security can be given for shifting of the plant. According to the learned counsel, the clause impugned in the petition limits the competition and the same is not in consonance with the object and purpose of issuing e-tender. The said clause requires to be set aside and the petitioner deserves to be given opportunity to participate in the tender process.

3 We have considered the submissions canvassed by the learned counsel. The clause sought to be assailed by the petitioner requires the tenderer to possess RMC plant within a periphery of 20 kilometers of the location / site. The underline purpose for imposing the said condition appears to be that the person, who would be issued with the tender should have the RMC plant within a reasonable distance for performing his part of contract. Four tenders are already received even as per the contention of the petitioner till date. The last date for filing the tender is 5th July, 2021. The principal / employer is required to be given some liberty to lay down the terms and conditions. The Court would be loath in interfering with the tender process and its conditions unless it is shown that the tender condition is arbitrary, unreasonable and does not have any rational nexus with the purpose

of tender.

4 We do not find that the said clause is unreasonable.

5 Admittedly, the petitioner does not have RMC plant on the land till date. The lease agreement produced by the petitioner of a land wherein the petitioner purports to put up the RMC plant is on the basis of unregistered document. An agreement of lease reserving yearly rent is required to be by a registered instrument. The petitioner does not own the land.

6 In view of the aforesaid, we do not find it necessary to exercise our writ jurisdiction under Article 226 of the Constitution of Indian.

7 The writ petition is disposed of. No costs.

8 We have not entertained the writ petition assailing the clause of the tender. However, if the petitioner fulfills all the clauses of the tender, it is open to the petitioner to participate in the tender process.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]