

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8671 OF 2021

Vishmeet Transport
A Partnership Firm
Through its Partner
Vikrant Rajkumar Gulati

.. Petitioner

Versus

The Food Corporation of India
Through Its General Manager

.. Respondent

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Mr R.N. Dhorde, Senior Advocate i/by Mr V.R. Dhorde,
Advocate for the Petitioner

Mr Milind Patil, Advocate for the Respondent

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CORAM : S. V. GANGAPURWALA
AND
R.N. LADDHA, JJ.

DATE : 01-09-2021

PER COURT : -

1. Pursuant to the tender notice issued by the respondent the petitioner filled in the tender for the work of handling and transportation of food grains. The technical bid of the petitioner was rejected on the ground that Point No.6 of the Tender Submission Undertaking is incomplete.

2. Mr Dhorde, learned Senior Advocate for the petitioner

submits that the petitioner had submitted the undertaking as required under the tender document, however the relevant part of Point No.6 of the undertaking could not be scored off. The learned Senior Advocate further submits that on the very same day on 19-07-21 that is the date the technical bid was rejected, the petitioner filed a representation with the respondent stating that the petitioner is ready to file an affidavit / undertaking that the petitioner is not related to any employer / Officer of the respondent Corporation. The learned Senior Advocate further submits that the Clause - 15 of the tender requires that the bidder or an employee of the bidder or any person acting on behalf of the bidder whether directly or indirectly is a relative of an Officer of the Corporation or any relative of the Officer of the Corporation has financial interest, the same shall be disclosed by the bidder at the time of filing of the tender. The petitioner did not have any officer as relative in the Corporation nor any relative of the Officer of the Corporation has financial interest. Non scoring in the undertaking in point no.6 would not be fatal. The rejection on the said ground would be too technical and more particularly, when on the same day the petitioner had given representation to the respondent that none of the employee or Officer of the Corporation has relation with the petitioner. The same ought to have been accepted.

3. The learned Senior Advocate to substantiate his submissions relies on the judgment of the Division Bench of this Court at Nagpur Bench delivered in **Writ Petition No.4648 of 2016** on 02-09-2016 and the Judgment of the Hon'ble Apex Court in the case of **Rashmi Metaliks Ltd and another Vs. Kolkata Metropolitan Development Authority & ors.** reported in [2013 ALL SCR 3263].

4. Mr Patil, learned Advocate for the respondent submits that point no.6 of the undertaking is relevant and necessary as the contract cannot be given to a tenderer whose relative is an Officer of the Corporation or alternatively, if any relative of an Officer of the Corporation has financial interest / stake in the bidders firm and the same is the purport of the undertaking. The petitioner failed to give the said undertaking. As the undertaking required to be given as per the tender document was lacking, the respondent was within its power and authority to reject the technical bid of the petitioner. No error has been committed by the respondent. All the documents as required under the tender have to be furnished by the tenderer. Failure to furnish all the documents complete in all respects would entail rejection of the technical bid.

5. To substantiate his submissions, the learned Advocate for the respondent relies on the Judgment of the Hon'ble Apex Court in the case of **Ravindra Vs. Rashtriya Chemicals and Fertilizers Ltd** reported in **2017 (5) ABR 376**. The corrections are not permissible after the bid has been filled in pursuant to the tender. The relaxation sought to correct the mistakes is also impermissible. The learned Counsel relies on the Judgment of the Hon'ble Apex Court in the case of **W.B. Electricity Board Vs. Patel Engineering Co Ltd** reported in **AIR 2001 SC 682**.

6. The learned Advocate for the respondent further submits that the petitioner in the petition also has not made a statement clarifying that none of the Officer of the Corporation is related to the petitioner.

7. We have considered the submissions canvassed by the learned Counsel for the parties. The undertaking which the petitioner was required to furnish and / or point no.6 according to the respondent is incomplete is as under :-

“6. I/we hereby solemnly declare that the proprietor / one or more partners / directors of this firm/ company has relationship / has no relationship (tick whichever is applicable) with the employee of Food Corporation of India as defined in the tender document (Name and designation, place of posting of employee to be mentioned).”

8. The petitioner had given the undertaking as required under the tender document. The respondent also does not dispute the said fact, however in point no.6 of the said undertaking the petitioner failed to tick mark which is applicable i.e. “has no relationship”. This part was required to be tick marked by the petitioner, which the petitioner failed to tick mark.

9. The question is, whether the same would be fatal, more particularly when on the same day the petitioner had given an application to the respondent that the petitioner is ready to file an affidavit that none of the employees or Officers are related with the petitioner. To consider the same, Clause No.15 of the tender document is also required to be read in juxtaposition with the undertaking as referred to above. Clause 15 of the tender document is as under :

“15. Declaration of Near Relative

If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of an officer of the CORPORATION, or alternatively, if any relative of an Officer of the CORPORATION has financial interest / stake in the BIDDERS firm, the same shall be disclosed by the BIDDER at the time of filling of tender.

The term ‘relative’ for this purpose would be as defined in Section 6 of the Companies Act 1956.”

10. Clause No.15 of the tender document requires the bidder to make a declaration only if the bidder or any employee of the bidder or any person acting on behalf of the bidder, either directly or indirectly, is a relative of an Officer of the Corporation, or alternatively, if any relative of an Officer of the Corporation has financial interest / stake in the bidders firm.

11. The undertaking as referred to above contains various clauses, such as the tenderer read the entire terms and conditions of the tender document, the corrigendum issued from time to time by the department, unconditionally accept the tender conditions and if any provisions of the tender are found violated, the department would be entitled to reject the tender and forfeit the earnest money deposited. All these five clauses are filled in by the petitioner. In 6th clause, the petitioner did not score off “has no relationship”. On the same day the petitioner in unequivocal words gave an application to the respondent that the petitioner is ready to give an affidavit that the petitioner does not have any relative as an employee or the Officer of the Corporation. Reading Clause 15 along with the undertaking, it would be manifest that point no.6 of the undertaking was by way of an abandon caution as clause 15 did not mandate the bidder to give a declaration if any Officer of the Corporation is not

related to him or any relative of the Officer of the Corporation does not have interest in the bidders firm. We will have to read Clause 15 of the tender document which is one of the main clauses along with the undertaking. Considering Clause 15 of the tender document along with point no.6 and the fact that on the very same day the petitioner had given an application that he is ready to file an affidavit that he has no relative as an employee or the Officer in the Corporation, we find that the said order rejecting the technical bid of the petitioner on the ground that point no.6 is incomplete does not stand to reason. The said order technically disqualifying the petitioner is quashed and set aside.

12. Writ Petition is accordingly disposed of.

[R.N. LADDHA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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