

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

906 WRIT PETITION NO.9983 OF 2021

SWASTIK INDUSTRIAL CORPORATION, THROUGH ITS PARTNER
NITESH S/O PRADEEP CHATRAPAND AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Ramesh R. Imale.

AGP for Respondent/State: Mr. S. G. Karlekar.
...

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

DATE : 15th September, 2021.

P.C.:

. Mr. Imale, learned counsel for petitioners submits that the tender floated by the respondents for the work of providing and fixing furniture for HWC PHC & SC (693 No's) at District HWC Centres of Aurangabad Circle, is against the policy of the Government. The Government of India has floated a policy whereby purchases of the nature for which the tender is issued, has to be from small scale units. The learned counsel relies upon the communication dated 29th July, 2003 issued by the Government of India for the said purpose. The learned counsel submits that the impugned tender is also erroneous in as much as 1% Earnest Money Deposit is solicited. The same is not permissible as per the policy of the State of Maharashtra under the Government Resolution dated 1st December, 2016. The small scale

units are refrained from participating in the tender process by putting such condition. The issuance of tender in the present nature would cause loss to the Public Exchequer. According to the learned counsel, the tender conditions and the tender itself being against the policy of the Government, deserves to be quashed and the respondents be directed to allot the work, for which tender is issued to small scale units like the present petitioners.

2 Mr. Karlekar, learned Additional Government Pleader submits that none of the petitioners had participated in the tender process. Without participating in the tender process, the petitioners are now agitating the terms of the tender.

3 If the petitioners would have participated in the tender process, the petitioners would not have been in a position to challenge the terms of the tender. In view of that, the argument of the learned Additional Government Pleader that the petitioners did not participate in the tender process may not hold ground.

4 However, it needs to be considered that the tenders were floated on 2nd July, 2021. The last date for opening of the technical bid was 26th July, 2021. The said date was extended upto 2nd August, 2021.

5 It is submitted that seven tenders have already been received and the same are evaluated. The petitioners filed the present writ petition only on 2nd September, 2021 and after the matter was circulated, a week's accommodation was sought by the petitioners.

6 The learned counsel for petitioners could not point out the policy of the State of Maharashtra prescribing the work under the tender to be done by small scale units only. The condition of Earnest Money Deposit could have been considered if the petitioners would have approached this Court before the last date of filling in the tender i.e. 2nd August, 2021. The petitioners, after a month of the last extended date for submission of the tender, has approached this Court on 2nd September, 2021. We cannot now direct reversal of the entire tender process.

7 The contention of the petitioners that the petitioners have issued legal notice to the respondents on 29th July, 2021 may not also hold ground as the said notice was also issued after the last date of filling in the tender as per the initial last date.

8 Nevertheless, we could have considered the submissions of the petitioners, had the petitioners approached this Court prior to the last date of filling in the tender.

9 In light of the above, the writ petition is disposed of.

No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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