

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
34 WRIT PETITION NO.10123 OF 2021

BORSE BROTHERS ENGINEERS AND CONTRACTORS PRIVATE
LIMITED ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

AND

35 WRIT PETITION NO.10124 OF 2021

BORSE BROTHERS ENGINEERS AND CONTRACTORS PRIVATE
LIMITED ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

AND

36 WRIT PETITION NO.10125 OF 2021

BORSE BROTHERS ENGINEERS AND CONTRACTORS PRIVATE
LIMITED ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Vijay B. Patil, Advocate for the Petitioners.
Mrs. V. N. Patil-Jadhav, AGP for Respondents-State.

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

DATED : 14th SEPTEMBER, 2021.

PER COURT:-

1. The petitioners are assailing the terms and conditions of the tender notice.

2. Mr. Patil, learned counsel for petitioners submits that, following terms in the tender are irrational and does not stand to reason:

Clause 3.4.2

Scanned copy of Valid Contractor Registration to Tribal Development Department.

Clause 3.4.6

At least 50% of Amount of Tender work was mandatory to be done in Tribal and Hilly Area during last 5 (Five) years.

Clause 3.4.14

It is mandatory for Bidders to obtain site visit report from Concern Deputy engineer of P.W. (Tribal) Sub Division Office before submission of Bid.

3. According to the learned counsel, the imposition of condition to submit valid contractor registration with Tribal Development Department is excessive and does not serve the object to be achieved. The learned counsel submits that, as per the Government Resolution dated 02.06.2021, the outer period for issuance of registration certificate is 90 days. Prior to 90 days tender notice ought not to be issued. No purpose would be served. The learned counsel further submits that, condition of performing at least 50% of the amount of tender work in tribal or hilly area during last 5 (Five) years is unreasonable and arbitrary. Whether a construction is done in Dhule or Nandurbar would not make any difference. The

construction after all is construction of a building. The person possessing expertise of construction at one place can construct a building at another place. The learned counsel submits that Clause 3.4.14 mandating the bidders to obtain site visit report from concern Deputy Engineer of Public Work (Tribal) Sub Division Office before submission of bid is also excessive. The petitioner had applied for the site visit much in advance, but the concerned Deputy Engineer of Public Work (Tribal) did not pay visit in time. All these conditions are erroneous. The last date for filling in the tender in Writ Petition No.10124/2021 is 13.09.2021, in Writ Petition No.10123/2021 is 16.09.2021 and Writ Petition No.10125/2021 is 15.09.2021. As the tender condition does not have any nexus with object in view, they are irrational, arbitrary and deserve to be quashed and set aside.

4. We have heard learned A.G.P.

5. The employer is entitled to impose terms and conditions in the tender. This Court would be slow in interfering with the terms and conditions set out in the tender notice. Some leverage has to be given to the authority framing the terms and conditions of the tender. The Court in contractual matters would not substitute its own views for the terms and conditions put forth by the employer, unless it is found that, the terms and conditions are manifestly arbitrary and smack of favouring

particular entities. In the present matter specific names have not been spelt out as to the persons/tenderers sought to be favoured. We do not find any malafides involved in the matter. Moreover, petitioners are not yet registered. We do not find that, condition of the registration with the Tribal Development Department to be erroneous or unreasonable. In one matter the last date of filling the technical bid is over and in two matters the last date is tomorrow and day after tomorrow. The tender notice was published in the newspaper on 14.08.2021 and on website on 23.08.2021. The petitioners approached this Court by filing petitions only on 07.09.2021. No proper reasons are given as to why petitioners have approached this Court at the eleventh hour. It would not be appropriate now to entertain the petitions at such a late stage.

6. In view of all the aforesaid facts, no interference is called for.

7. Writ Petition is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE