

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1099 Writ Petition No.10631 Of 2021

Syed Ismail Syed Karim

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

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Mr S.G. Chapalgaonkar, Advocate for the Petitioner

Mr D.R. Kale, In-charge Government Pleader for Respondent No.1

Mr S.S. Thombre, Advocate for Respondent No.2

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

DATE : 08-10-2021

PER COURT :

1. Mr Chapalgaonkar, learned Advocate for the petitioner submits that the petitioner is assailing clause - 14 of the tender conditions wherein the tenderer is required to own and possess at the time of tender the machineries enlisted therein. According to the learned Advocate, though the tender work is for Rs.9,21,19,682/-, the work of road is only for an amount of Rs.85,00,000/- and for that purpose the respondents require a tenderer to own the machines worth in crores. The learned Advocate submits that the same is erroneous. According to the learned Advocate, in other tenders for the similar work less capacity of machines are provided. The respondents

without any purpose has provided for the huge machineries to be possessed by the tenderer. The same is not necessary for the quantum of the work sought to be done under the tender notice. According to the learned Advocate, the tender conditions are also contrary to each other. Clause - 12 nowhere requires a tenderer to own the machines, it only requires the tenderer to possess the machines, whereas under Clause - 13 and 14 the tenderer is required to own the machines, the same is illegal. The learned Advocate submits that the respondents on affidavits have stated that three tenders are received. Even those persons do not possess the machines of their own ownership.

2. Mr Thombre, learned Advocate for respondent no.2 submits that three tenders received are in consonance with the terms of tender and the machines require to be owned by the tenderers as per the tender conditions are owned by them. No clause is flouted. The learned Advocate further submits that the employer has a right to lay down the terms and conditions of the tender. It is with a view to ensure that the tenderer possesses the necessary capacity and capability to do the work, it is provided that the tenderer should own the machines.

3. We have considered the submissions. The tenderer is required to own the following machines as per the tender :-

1.	SCADA Enabled fully automatic Ready Mix Concrete Plant 2.5 Capacity 120 Cum per Hour	1 Number (Owned)
2.	SCADA Enabled fully automatic Fixed Form Concrete Screed Paver (Minimum 6 metre width)	1 Number (Owned)
3.	Vibratory Roller with Compaction analyzer for soil	2 Numbers (Owned)
4.	Static Roller 8 to 10 Tonne / Smooth wheeled Power Roller	2 Numbers (Owned)
5.	Transit Mixer	2 Numbers (Owned)
6.	Tippers / truck with Vehicle Tracking System	5 Numbers (Owned)
7.	Needle Vibrator	2 Numbers (Owned)
8.	Motor Grader	1 Number (Owned)
9.	Excavator / JCB	1 Number (Owned)
10.	Hydro Cyclone Sand Washing Unit	1 Number (Owned)

4. Some leverage has to be given to the Principal for laying down the terms and conditions of the tender. The terms and conditions of tender are embodied by the experts in the particular field. It will not be appropriate for the Court to evaluate the requirement of a particular machinery for a particular work. The experts in their

opinion has sought the availability of machines from the tenderer for the work in question.

5. Other contention of the petitioner is that none of the tenderers who had filled in the tender would possess the machineries owned by them. It is for respondent no.2 to consider the said aspect. Naturally respondent no.2 cannot accept the tender not complying with the terms and conditions. If none of the tenderers possesses the machineries owned by them as enlisted, then certainly none of the tenders can be accepted and respondent no.2 may have to go for fresh bids with terms and conditions that it would deem necessary.

6. In light of the above, Writ Petition is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

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