

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

130 REVIEW APPLICATION NO. 78 OF 2021
IN
WRIT PETITION NO. 8671 OF 2021

THE FOOD CORPORATION OF INDIA THROUGH ITS GENERAL
MANAGER
VERSUS
VISMEET TRANSPORT

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Advocate for applicant : Mr. Milind M. Patil
Advocate for Respondent : Mr. R.N. Dhorde, Senior Advocate i/b.
Mr. V.R. Dhorde

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

DATED : 25/10/2021.

PER COURT :

. The present applicant seeks review of the order passed by this Court on 1st September, 2021 in Writ Petition No. 8671/2021.

2. The non applicant had filled in the tender for the work of handling and transportation of food grains. Technical bid of the present non applicant was rejected on the ground that the undertaking as required under tender document was not filled in. In the order under review, we had set aside the decision of the

present applicant, rejecting the technical bid of the non applicant herein.

3. Mr. Milind Patil, learned advocate for the applicant submits that while delivering the judgment under review, this Court did not consider sub-clauses (b), (g) and (h) of Clause 8 of the tender document. These clauses specifically provides that the tender which did not comply with the above instructions shall be summarily rejected. The tender not accompanied by all the Schedules/Annexures intact and duly filled in and signed will be rejected. It further provides that no opportunity shall be given to the tenderer to alter, modify or withdraw any offer at any stage after submission of the tender.

4. The learned counsel submits that the petitioner had not clarified in the undertaking that he does not have any officer or employee of the Corporation as his relative. The said condition was mandatory. In view of that, the non applicant cannot be given opportunity to rectify the defect. The same would be against the public policy. As the tender conditions specifically provides that if there is non compliance of instructions, the tender would be

summarily rejected, this Court ought not to have set aside the decision disqualifying the non applicant. While passing the judgment under review, clause 8 of the tender conditions was not considered by this Court. The learned counsel submits that the relative of the officer of the Corporation cannot be allowed to participate in the tender. The same would be against the public policy. It is with that objective the undertaking is solicited from the tenderer to disclose that they do not have any relative working in the Corporation.

5. We have heard the Mr. R.N. Dhorde, learned Senior Advocate for the non applicant.

6. While delivering the judgment under review, we had considered various factors. Clause 15 of the tender condition requires declaration of near relative. Clause 15 reads thus :-

“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 BIDDER 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”

7. We had observed in the judgment under review that clause 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. The same has to be declared.

8. In the present case, it is also not the case of the present applicant that non applicant has any officer or employee of Corporation has his relative.

9. An undertaking was also required to be annexed. The undertaking provided six clauses. The petitioner had filled in all the clauses. Clause No. 6 requires the petitioner to clarify about

the person or any Officer or an employee of the Corporation as a relative. The undertaking required reads thus :-

“1) I/We have downloaded/obtained the tender document(s) for the above mentioned ‘Tender/Work’ from the website(s) namely :_____as per your advertisement, given in the above mentioned website(s).

2) I/We hereby certify that I/We have read the entire terms and conditions of the tender documents from (including all documents like annexure(s) schedules(s), etc.) which form part of contract agreement and I/We shall abide hereby the terms/conditions/ clauses contained therein.

3) The corrigendum(s) issued from time to time by your department/organizations too have also been taken into consideration, while submitting this acceptance letter.

4) I/We hereby unconditionally accept the tender conditions of above mentioned tender document(s) corrigendum(s) in its totality/entirety.

5) In case any provisions of this tender are found violated, then your department/organization shall without prejudice to any other right or remedy be at liberty to reject this tender/bid including the forfeiture of the full said earnest money deposit absolutely alongwith taking action as per other remedies available under law.

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 employees of Food Corporation of India as defined in the tender document (Name and Designation, place of posting of employee to be mentioned)”

The petitioner had filled in the undertaking, however, in clause 6, the petitioner did not tick mark “has no relationship”. On the same day, the present non applicant gave an application to the present applicant that he is ready to give an affidavit that he does not have any relative as employee or officer of Corporation. We had considered clause 15 reproduced supra and the fact that the undertaking was filed and only “has no relationship” was not scored off and on the same day, the petitioner gave an application for permitting him to file such affidavit.

10. We do appreciate that there are certain conditions which are mandatory and the deficiencies that cannot be allowed to be rectified. In the present case, we had considered the clause 15, the undertaking filed by the petitioner and the application given on the same day.

11. The purpose of the tender is to invite competitive bidding and to get best offers.

12. Considering the aforesaid aspects of the matter, we do not find that the case for review is made out. The review application is disposed of. No costs.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

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