

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7393 OF 2021

Rohit Enterprises & Anr. ... Petitioners
V/s.
Union of India & Ors. ... Respondents

Mr.Vishal Dushing with Mr.Vaibhav Salvi for the Petitioners.
Mr.Kedar Dighe for Respondent Nos.4 to 6.
Mr.Manoj Nandkumar Lonkar, Deputy Commissioner, Pimpri Chinchwad
Municipal Corporation.

**CORAM: PRASANNA B. VARALE &
MADHAV JAMDAR, JJ.**

DATE : 28TH OCTOBER, 2021.

P.C:-

Heard learned Counsel for the Petitioners.

2. The Petition was circulated claiming extreme urgency.
3. Learned Counsel for the Petitioners submitted before us that the Petitioners were tenderers/offeree and in response to a notice issued at the instance of Respondent No.3 – Pimpri Chinchwad Municipal Corporation bearing No.50/2021-2022 submitted his offer. Needless to state at this stage that entire process is known as e-tender process and as such notice issued by Respondent No.3 also refers to as e-tender process bearing No.50/2021-2022.
4. Learned Counsel for the Petitioner vehemently submitted that he has submitted bid and received message “Packet bid documents submitted

successfully”. Thus, learned Counsel for the Petitioners submitted that the Petitioner was under impression that his documents are accepted by Respondent No.3. When the Petitioner could not find his name in the list of bidders, the Petitioner made complaint to e-Procurement. Help Desk Team on 11/10/2021 at 8.27 pm and immediately it was informed to the Petitioner by email dated 12th October, 2021 at 12.48 pm, a copy of the same is placed on record at Exhibit-H Page 44 that “As per the screen shot, after submitted the payment and documents user needs to click on “Next” button then click on “Freeze bid/Submit” option for final submission”. It is further stated that “kindly go through the Bidders Manual Kit available on the home page for complete Bid submission process.”

5. The Pimpri Chinchwad Municipal Corporation also replied to the communication dated 11/10/2021 of the Petitioner on 20/10/2021, a copy of the same is placed on record at Page 27 of the Petition. In the communication dated 20/10/2021 it is stated that as per system if the document of the Petitioner is successfully submitted the Petitioner/offeree receives message “Bid Submitted Successfully”. It is then stated in the communication that as no such message was sent to the Petitioner it leads to the conclusion that the Petitioner’s document was not properly submitted. The Petitioner also submits in the Petition that as abundant precaution the Petitioner had submitted hard copy of all documents before expiry of online date of bids and inspite of submitting hard copy of the documents before expiry date, the Petitioner’s offer was not considered. Then the Petitioner submitted that post filing of the Petition it came to the knowledge of the Petitioner that some bid offeror’s have been given an opportunity to correct their shortfall in the technical bid. Thus, the learned Counsel for the Petitioner submits that the Petitioner received discriminatory treatment.

6. As the Petitioner has claimed extreme urgency in the matter, we have permitted the Petitioner to circulate the Petition. The Petitioner has served Respondent Nos.4 to 6 (it appears that in the cause title “State of Maharashtra” as well as Pimpri Chinchwad Municipal Corporation” are referred to as Respondent No.3. We permit the Petitioner to amend the Petition by correcting the sequence of the Respondents in cause title of the Petition).

7. Learned Counsel for the Respondent Nos.4 to 6 on instructions provided to him through Shri Manoj Nandkumar Lonkar, Deputy Commissioner, Pimpri Chinchwad Municipal Corporation, who himself is present in this Court as well as by inviting our attention to the affidavit in reply submitted that in response to the tender notice, as many as 29 tenders/offers were received.

8. Learned Counsel appearing for Respondent Nos.4 to 6 vehemently submitted that the Petitioner for his own fault cannot throw blame on the Respondents. Learned Counsel for the Respondents submitted that in recent past tender process in the State of Maharashtra is conducted by way of e-process and the Bidders Manual Kit was made available for all those desirous to bid. It is stated in the affidavit in reply on behalf of Respondent Nos.4 to 6 that it is made compulsory by the State Government that bid process shall be managed by the Respondents – NIC and those were to be submitted on Maha Tender site which is managed and controlled by NIC. Learned Counsel for Respondent Nos.4 to 6 submitted that NIC is an independent agency controlled by NIC. It is stated in the affidavit in reply that the Petitioner ought to have submitted “Freeze” button as per Bidders Manual Kit so as to process his bid offer. Learned Counsel for Respondent Nos.4 to 6 also invited our attention to relevant documents placed on record

issued by the NIC in respect of e-tender process. It is then submitted that as per system evolved by NIC the Petitioner was to exercise option of clicking "Freeze" button after uploading his documents by inviting our attention to Page 69. It is submitted that on completing this process the next command to be issued clicking "Next". After exercise of "freeze" option, a person can process "click" button so as to view uploaded file details. On exercising that option details appear on the screen as reflected at Page 70 of affidavit in reply. Then the person can proceed further for submitting other details such as EMD details etc. Page 72 again reiterates the fact of clicking "freeze" bid submission for acknowledgment. Now the Petitioner himself admits in the Petition under caption "cause of action" and urgency in Petition in para II (iii) on Page 7 that Petitioner did not click on the option called "freeze" after uploading the documents. This clearly supports the submission of learned Counsel appearing for Respondent Nos.4 to 6 that for failure of the Petitioner to undertake exercise properly for submission of his bid offer the Petitioner cannot throw blame on others for not accepting his bid/offer.

9. Then other submission of learned Counsel for the Petitioner was of discriminatory treatment to the Petitioner. The learned Counsel for the Petitioner had placed reliance on the communication dated 25/10/2021 issued under signature of the Deputy Commissioner, Pimpri Chinchwad Municipal Corporation. It is stated that those bid offerors who have submitted complete papers through e-tender process an opportunity is granted to them to comply with their shortfall.

10. Learned Counsel for Respondent Nos.4 to 6 admitted this document and submitted that this opportunity was given to only those bid offerors whose offer were received by the Corporation under e-tender process,

meaning thereby all tender offerors have followed the procedure thoroughly including exercising option of clicking freezing button and exercising further options. The Petitioner at very initial stage itself failed to comply with the necessary formalities as expected in the bidders Manual. Thus, we are unable to find merit in the submission of learned Counsel for the Petitioner that the Petitioner was subjected to discriminatory treatment.

11. Last ground raised by the Petitioner is that though the Petitioner was ready to provide hard copies of tender documents before the last date, the Respondent – Corporation denied to accept the hard copies. On going through affidavit in reply filed by Respondent Nos.4 to 6, even this contention holds no water. It may be useful for our purpose to submissions made in the affidavit in reply in paragraph 8 that the grievance of the Petitioner that hard copies of the documents was accepted by the corporation and the Petitioner is not allowed to submit is devoid of merits and has no relevance as all bids or tender process was only by e-tender process for all Government and Local Self Government since last so many years and it is only by abundant precaution and for reference purpose hard copies of the technical documents are called for from the bidders. It is further stated that the financial bid is only to be submitted by e-tender process and not by physical process. Thus the contention raised regarding submission of bid by hard copy is not relevant.

12. In view of above, we are of the opinion that the Petition is thoroughly devoid of merits as such deserves to be dismissed at the outset and the same is accordingly dismissed.

[MADHAV JAMDAR, J.]

[PRASANNA B. VARALE, J.]