

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

WRIT PETITION NO. 8264 OF 2021

Siddhivinayak Enterprise
Baba Apartment, Flat No. 4,
Sitabaug Colony, Opp. Parvati
Jalshuddikaran Kendra, Sinhagad Road,
Pune-411 030 ... Petitioner

Versus

1. The State of Maharashtra

2. Pimpri Chinchwad Municipal Corporation
Through Commissioner, Pimpri Chinchwad
Municipal Corporation, Pimpri-411 018.

3. Deputy Commissioner, Health Department,
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune-411 018.

4. Additional Commissioner,
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune-411 018.

5. Secure IT Facility Management Pvt.
Shreethnath Plaza, Dyaneshwar
Paduka Chowk, F. C. Road, Pune-411 005 ... Respondents

Mr. Shriram Kulkarni i/b Mr. P. M. Khatavkar for Petitioner.
Mr. A. A. Alaspurkar, AGP for the State.
Mr. Rohit Sakhadeo for Respondents No. 2 to 4.
Mr. Girish S. Godbole i/b Mr. Niranjana Bhavake and Associate for
Respondent No.5.

This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

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**CORAM : A. A. SAYED &
ABHAY AHUJA, JJ
RESERVED ON : 15TH DECEMBER 2021
PRONOUNCED ON : 23RD DECEMBER 2021**

PC:- (PER COURT)

1. Rule. Rule made returnable forthwith. By consent of counsel for the parties and at their request, the petition is heard finally.
2. By this Petition filed under Article 226 of the Constitution of India, 1950, Petitioner who has been declared L-2 bidder, is seeking writ of this Court quashing and setting aside the acceptance of the bid of Respondent No.5 by Respondents no. 2 to 4, who has been declared as L-1 bidder and to declare Petitioner as successful bidder.
3. Brief facts are as under:-

That the Respondents no. 2 to 4 floated an E-Tender being Tender Notice No. 3(1 to 8) 2021-2022 for the purpose of appointing labour for day to day cleaning of the roads, gutters in Zone A to H of Pune city.

4. The last date for submission of the tender was 13th August, 2021, which was extended upto 20th August, 2021. The date for opening of the bid was 17th August, 2021, which was extended upto 23rd August, 2021.

5. Amongst other conditions of the tender, condition no.1 provides that it would be necessary/essential/mandatory for the bidders for this work to have the following documents which are valid on the date of tender. Condition no. 1A provides that the bidder is to submit a valid Contract Labour License and if the work is going on in the Pimpri-Chinchwad Municipal Corporation, then it would be mandatory to possess a labour license from the said Corporation. The Conditions no. 1 and 1A as per the tender are quoted as under:-

“१. निविदाधारकाकडे या कामासाठी खालीलप्रमाणे अद्यावत कागदपत्रे असणे आवश्यक राहिल.
१A. लेबर कॉन्ट्रॅक्टर लायसन्स (पिंपरी चिंचवड महानगरपालिकेमध्ये सद्यस्थित काम चालू असेल तर पि. चि. मनपाचे लेबर लायसन्स असणे बंधनकारक आहे.)”

6. Condition no. 1A came to be modified pursuant to the pre-bid meeting held on 27th July, 2021, as under:-

“१. महाराष्ट्र राज्याचे कुठलेही वैध लेबर लायसन्स ग्राह्य धरण्यात यावे.”

7. Whereas the earlier condition no. 1A provided that the labour
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license should be issued by Respondent No.2-Corporation, but after the pre-bid meeting, the said condition was modified to state that any valid labour license from the State of Maharashtra would be adequate. As per condition no. 35, if the necessary documents are not submitted and/or incomplete documents are submitted before the last date, Respondent No.2 was empowered to disqualify the bidder and condition no. 36 reserved the rights of the Corporation to accept/reject the bids or cancel the entire tender process.

8. Petitioner submitted his bid along with documents for Zone-B and Respondent No.5 also submitted the bids along with documents for Zones A, B and F.

9. It is submitted that the technical bids were opened on 23rd August, 2021 and the results for the same were declared on 10th September, 2021. Petitioner submits that after scrutinizing the documents, Respondents No. 2 and 3 published the list of eligible as well as disqualified bidders on 10th September 2021, whereby Respondent No.5 was shown as eligible L-1 bidder for Zone-A and Zone-B but disqualified for Zone-F statedly, as it did not possess the valid Contract Labour License. In respect of Zone B, Petitioner was

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ranked as L-2 bidder. Thereafter, on 15th September, 2021, the financial/price bids were opened and the results were declared where again in respect of Zone-B, Respondent No.5 was declared as the successful L-1 bidder and Petitioner was declared L-2 bidder.

10. Petitioner has thereafter obtained documents filed by Respondent No.5 from the E-Tender site of the Respondent-Corporation and submits that a perusal of the said documents, revealed that Respondent No.5 had not complied with the mandatory modified Condition no. 1A of the tender, whereby it is required to have a valid Contract Labour License.

11. Mr. Shriram Kulkarni, learned Counsel for Petitioner submits that what was filed by Respondent No. 5 at the time of the bidding process was a registration certificate and not a Contract Labour License and despite that Petitioner has been declared a successful bidder, alleging perversity and *mala fides*.

12. On 20th September, 2021, Petitioner issued notice to Respondents No.2 to 4 stating that the document submitted by Respondent No.5 was a registration certificate and not a Labour

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License and therefore, Respondent No.5 was ineligible to participate in the tender and liable to be disqualified.

13. Admittedly, the valid Contract Labour License dated 21st September, 2021 was submitted by Respondent No. 5 on 21st September, 2021, which is after closing of the tender on 23rd August, 2021 and the opening of the technical bids on 20th August, 2021 and the opening of the financial bids on 15th September, 2021.

14. On 21st September, 2021, the Labour Welfare Officer of Respondent No.2, vide his letter informed that if Respondent No.5 has not submitted the Labour License which is valid in the State of Maharashtra, then he would stand ineligible for the bidding and that the certificate of registration was not a labour license and considering the terms and conditions of the tender, it would not be proper to hold Respondent No.5 eligible for bidding on the basis of the certificate of registration.

15. The Labour Welfare Officer of the Respondent Corporation has after considering the license dated 21st September, 2021, given his This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

opinion dated 20th October, 2021 that the labour license submitted by Respondent No.5 can be considered as valid pursuant to which the Respondent Corporation was to issue the work order to Respondent No.5.

16. However, since Petitioner had filed this Petition on 18th November, 2020, this Court had as and by way of ad-interim relief dated 30th November 2021 directed that till the next date, no work order would be issued and therefore, as on date no work order has been issued to Respondent No.5 or to any other person.

17. There is no dispute in respect of the aforesaid facts and the same are admitted.

18. Learned counsel for Petitioner has relied upon the following two decisions of the Hon'ble Supreme Court in support of his contentions:-

(1) Glodyne Technoserve Limited Vs.State of Madhya Pradesh, (2011) 5 SCC 103 and (2) W. B. State Electricity Board Vs. Patel Engineering Co. Ltd. And Others, (2001)2 SCC 451.

19. Respondent-Corporation has admitted in its Affidavit-in-Reply that at the time of initial scrutiny, the certificate of registration submitted by Respondent No.5 was infact "mistakenly" treated as This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

valid Labour License. However, subsequently copy of the license dated 21st September, 2021 was provided and was considered. According to the Corporation, as the tender process was in an advanced stage and Respondent No.5 submitted lowest bid, though the license was submitted belatedly on 21st September, 2021, the Corporation decided to accept the same instead of rejecting the said bid of Respondent No.5.

20. It is also submitted by Shri Sachadeo, learned Counsel for the Corporation that due to COVID-19 Pandemic, the process has been going on for some time and has already been delayed and therefore, it is important from a public health point of view, that if the process is delayed further, it is likely to cause prejudice to the general public. It is submitted that the earlier tenders had to be cancelled due to reasons mainly related to objections, complaints, allegations by several societies/bidders, individuals, groups, etc. Therefore, to ensure that the process is taken to its logical end, the Corporation decided to accept the valid license from Respondent No. 5 though at a belated stage, instead of further dragging the said process.

21. On behalf of Respondent No. 5, Affidavit-in-Reply dated 6th This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

December, 2021 has been filed. Learned Counsel, Mr. Godbole, firstly submits that the condition of having a valid Contract Labour License as on the date of the tender is not a mandatory condition to be met at the time of submitting the bid but that the same has been submitted later on 21st September, 2021. Nowhere, in the tender conditions, he submits that there is language that mandates that without submission of the said document, the bidder will be disqualified or the tender would be held to be invalid or incomplete.

22. He further submits that considering the nature of tender being a tender with respect to the cleaning of roads and gutters, in view of the various decisions of the Hon'ble Supreme Court, this Court should refrain from giving its own interpretation of tender conditions unless it comes to a clear conclusion that there is perversity or *mala fides* or intended to favour one of the bidders, which according to him is not the case as no specific details or particulars have been furnished by the Petitioner except bald allegations. He further submits that the said tender is a small tender and also more importantly concerns with the public health of citizens of Pune.

23. Learned Counsel for Respondent No.5 relies upon the decision This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

in the case of *Central Coalfields Limited and Anr. Vs. SLL-SML (Joint Venture Consortium) and Ors., (2016) 8 SCC 622*, to submit that whether the terms of the tender are essential or not is a decision taken by the employer which should be respected and even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders. He would also submit that if the Courts take over decision making process and make a distinction between essential and the non-essential terms, that would be contrary to the intention of the employer and thereby amount to rewriting the arrangement., which could lead to all sorts of problems.

24. Learned Counsel submits that the Constitutional Courts, should not interfere with the interpretation taken by the owner or employer of the project which in this case is the Municipal Corporation. He relies upon the decision of the Supreme Court in the case of *Afcons Infrastructure Limited Vs. Nagpur Metro Railway Corporation Limited and Another, (2016) 16 SCC 818*.

25. Learned Counsel has also referred to the decision in the case of *Montecarlo Limited Vs. National Thermal Power Corporation Limited*, This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

(2016) 15 SCC 272, to submit that the power of judicial review, in tender or contractual matters should be exercised only to answer the question whether the process adopted or decision made by the authority is *mala fide* or intended to favour someone or the process adopted or decision made is so arbitrary and irrational that the judicial conscience cannot countenance. He submits that the emphasis is laid on the test, whether award of contract is against public interest. The said decision also refers to the decision in the case of *Afcons Infrastructure Limited (supra)*.

26. He also relies upon the decision of the Supreme Court in the case of ***Caretel Infotech Limited Vs. Hindustan Petroleum corporation Limited and Ors, (2019) 14 SCC 81*** and submits that the Hon'ble Supreme Court has taken a view that the window of Article 226 of the Constitution of India has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. He submits that this in turn, affects the the efficacy of commercial activities of the public sectors, which may be in competition with the private sector and this could hardly have been objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

awarding of contracts by Government and public sectors a cumbersome exercise, with long drawn out litigation at the threshold. He also submits that in the context of endeavour of Courts to give their own interpretation to Contracts, more specifically tender terms, at the behest of the third party competing for the tender, rather than what is propounded by the party framing the tender cannot be permitted. He submits that the object cannot be that in every contract, where some parties would lose out, they should get the opportunity to somehow pick holes, to disqualify the successful parties, on grounds on which even the party floating tenders finds no merits.

27. While citing this decision, he submits that as stated in the Affidavit filed by Respondent No.5, even Petitioner was not having valid license on the date of submission of the tender bid for Zone-A. He, therefore, urges this Court that to avoid such situations referred to by the Hon'ble Supreme Court, this Petition deserves to be dismissed.

28. Learned Counsel also refers to the decision in the case of *State* This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

of Madhya Pradesh and Another Vs. U.P. State Bridge Corporation Limited and Another, 2020 SCC OnLine SC 1001, and relies upon paragraphs no. 21 to 26 to submit that the Court must defer to the understanding of clauses in the tender documents by the author thereof unless, pithily put, there is perversity in the author's construction of the documents or *mala fides*.

29. The short controversy that has come up for our consideration is whether the condition of having a valid Contract Labour License is a mandatory condition of the said tender, which document is required to be submitted before the last date of filing the tender or the same can be filed later on i.e., even after the opening of the financial bid, as in the present case.

30. From the plain language of the tender conditions it appears that the documents requested in the tender are essential/mandatory and had to be submitted by the last date of tender failing which or failing to submit complete documents will render the bidder ineligible, for which the Corporation would not be responsible. In particular modified condition no. 1A provides for the submission of a valid labour license from anywhere within the State of Maharashtra.

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31. In this context, learned counsel for Petitioner has drawn our attention to the provisions of Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, which provide that no contractor shall undertake or execute any work through contract labour except under and in accordance with the license issued in that behalf by the licensing officer.

32. Section 12 of the said Act is quoted as under :-

“12. Licensing of contractors.—(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.”

33. A bare perusal of the said Section would suggest that for a contractor to hire labour, he would mandatorily require a license under Section 12 of the Contract Labour (Regulation and Abolition)

Act, 1970, without which he would not be able to undertake or execute work through contract labour.

34. The license is granted pursuant to an application made under Section 13 of the said Act in the prescribed form and is valid for a specified period as mentioned therein and which is required to be renewed from time to time.

35. Rule 23 of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971, sets out the procedure for grant of license. It is stated therein that if license is not issued within seven working days of the application, it shall be deemed to have been granted and the copy of the receipt of an application with copy of payment of fees shall be treated as license. Under Rule 25 of the said Rules, every license granted under Rule 23 or under Rule 29 shall be in Form No. VI after taking into account matters set out under Rule 22 of the said Rules. Admittedly, Respondent No.5 has obtained license under Form-VI on 21st September, 2021 and submitted the same to the Respondents no. 2 and 3 on 21st September, 2021 after the date of the opening of the financial bid on 15th September, 2021 and after the date This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

of declaration of the final bids, holding Respondent No.5 as L-1 and Petitioner as L-2.

36. The above discussion leads us to the inevitable conclusion that without a valid Contract Labour License, Petitioner or Respondent No.5 or any bidder participating in the contract cannot conduct the business of labour contractor for undertaking or executing the work of cleaning of roads, gutters etc., through contract labour. Therefore, condition no. 1A, in our view, would be an essential/mandatory condition without which the bidder could not have bid for the tender. Pertinently, it is admitted in paragraph 8 of the Affidavit-in-Reply of Respondent no.5 that the said condition is a mandatory condition. Moreover, it is admitted in paragraph 8 of Affidavit-in-Reply of the Corporation that it was a mistake on the part of the Corporation to have accepted the Registration Certificate as labour license.

37. Having held that condition no. 1A is mandatory, the next question would be whether Respondent No.5 had submitted a valid Contract Labour License in accordance with the tender condition.

38. Admittedly, at the time of bidding what the Petitioner has submitted was registration certificate and not a Labour License. Further, admittedly, Petitioner had submitted the valid Labour License dated 21st September, 2021 only on 21st September, 2021, which means that on the date of closing of the tender or on the date of opening of the technical bid or on the date of opening of financial bid viz. 15th September, 2021, Respondent No.5 did not possess a valid Contract Labour License under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 and, therefore, the same, in our view, was violative of the tender conditions.

39. We now deal with the decisions cited by the learned Counsel for the parties.

40. Coming to the decision in the case of *Glodyne Technoserve Limited* (supra), relied upon by the Petitioner, the Hon'ble Supreme Court has while considering the question whether on account of corrigendum where the provisions of the tender documents as well as the checklist were amended, the Appellant was disqualified from consideration, in view of the fact that along with the tender documents it had filed, through inadvertence or otherwise, a copy of This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

the ISO-9001:2000 certificate of the previous year, instead of the current year, although it did have the said valid certificate at the time of making the bid. The Supreme Court despite vehement arguments to the contrary held that even if such a document was valid and active, but was not submitted along with the bid documents, may be due to inadvertence, the rejection of the bid by the authority cannot be said to be perverse or arbitrary. The following paragraphs of the said decision are apt and are quoted as under:-

"45. Having considered the submissions made on behalf of the respective parties, we are inclined to accept the submissions made by the Attorney General that the introduction of the Corrigendum completely changed the provision in the Bidder's response form relating to submission of the quality certificate in the form of an active ISO 9001:2000 certification. In any event, the appellant's contention based on Clause 9 of Section 7.1.1 of the RFP as it stood prior to corrigendum is misconceived. The said Clause 9 specifically provided:

".....A copy of the quality certificate or documentation of the quality policy needs to be provided along with the bid document. In case the certificate is due for renewal, the bidder should ensure that the renewed certificate is made available at the time of signing of contract. In case the same is not provided, the Department may consider negotiating the award of contract with the L2 bidder."

46. The above provision obliges a tenderer to produce along with the bid document a copy of the quality certificate which is valid and active on the date of submission of the bid and it does not enable a bidder to withhold the copy of such quality certificate. Where the quality certificate will be expiring shortly and is due for renewal, the bidder is also

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obliged to produce the renewed certificate at the time of signing of the contract. The appellant claimed to have a valid and active ISO 9001:2000 certificate at the time of submission of the bid, but did not produce a copy of the said certificate along with the bid document.

47. The submissions made on behalf of the appellant proceeds on the basis that it was entitled, almost as a matter of right, not to submit the documents required to be submitted along with the bid documents on the supposition that, even if such documents were valid and active, they could be submitted at the time of signing of the memorandum of understanding. The appellant had a valid and active ISO 9001:2000 certification which it did not submit along with the bid documents, may be due to inadvertence, but whether such explanation was to be accepted or not lay within the discretionary powers of the authority inviting the bids. The decision taken to reject the technical bid of the appellant cannot be said to be perverse or arbitrary. We need not refer to the decisions cited by the learned Attorney General or the appellant in this regard, as the principles enunciated therein are well-established.”

41. In the decision of the Hon’ble Supreme Court in the case of *W. B. State Electricity Board* (supra), it was considered whether mistakes in the unit price or total with respect to items submitted in the tender could be rectified after the opening of the bids. The Hon’ble Supreme Court examined the permissible course of action under the instruction to bidders (ITB) and held that even though the mistake may have been unintentional, but it would not be beyond the control of the Respondent-bidder to correct the same before submission of the bid and had they been vigilant in checking the bid documents before

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their submission, the mistakes would have been avoided. The Hon'ble Supreme Court held that the correction of the such mistakes after one and a half months of opening of the bids would be violative of the conditions of the tender. The Hon'ble Supreme Court also observed that the very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of rule or condition, unless so provided under the tender condition by the tendering body in favour of one bidder would create justifiable doubts in the minds of the other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. Paragraphs no. 23 and 24 of the said decision are relevant and are quoted as under:-

“23. The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as “a repetitive systematic computer typographical transmission failure”. It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of respondents 1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one and a half month of opening of the bids will also be violative of clauses 24.1, 24.3 and 29.1 of

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ITB.

24. *The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 & 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-bye by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to ITB or rules is the best principle to be followed, which is also in the best public interest.”*

42. In the present case where the labour license dated 21st September 2021 was not only obtained after opening of the financial

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bid and the declaration of the successful bidder, but also was admittedly submitted and accepted after the said date. In the case of *Glodyne Technoserve Limited (supra)* in which case the rejection of the bid was upheld even though there was a valid and active ISO certificate which was only not submitted alongwith the bid documents through inadvertence. Also in the case of *W.B. State Electricity Board (supra)* where the Supreme Court has held that even if a mistake is unintentional, but if it is not corrected before the submission of the bid, it cannot be permitted to be corrected after the opening of the bid would clearly apply to the facts of our case in as much as admittedly it is being claimed that not submitting the labour license was a mistake. The authority, therefore, in our view ought to have rejected the bid as being violative of the mandatory terms and conditions of the tender. In fact, in our view, the non-submission of the labour license dated 21st September, 2021 could not even be considered to be a mistake as the said document was not even in existence on the date of the opening of the financial bid or the award of the tender to Respondent No.5.

43. We have also carefully considered the decisions cited by Mr. Godbole, learned Counsel for Respondent No.5 and his submissions at length. The principles laid down by the Hon'ble Supreme Court

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therein are guiding rules of law with respect to the tenders referred to therein and we respectfully bow down to them. However, we note that the said decisions are clearly distinguishable on facts.

44. As far as the decision in the case of *Central Coalfields Limited* (supra) is concerned, true it is that the decision as to what is an essential condition and what is not should be left to the employer or the author. However, in the facts of this case where the Respondent-Corporation has chosen to deviate from the tender condition of having a valid labour license on the date of the tender only with respect to Respondent No.5 and considering that the same is not made applicable to all potential bidders, the said decision, in our view, would not be of much assistance to the Respondent No.5. By accepting the labour license dated 21st September 2021 furnished by Petitioner on 21st September 2021 much after the closing of the tender, after opening of financial bid and declaration of successful bidder, the Respondent Corporation was admittedly deviating from the essential tender condition but the said benefit was not available to all the bidders. Also having held that the condition of having a valid labour license as on the date of submission of the bid to be a mandatory/essential condition and that admittedly, the valid labour

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license was submitted by Respondent No.5 on 21st September, 2021 much after the date of the opening of the financial bid and the declaration of the successful bidder, it would not be necessary to dwell further on this. Therefore in our view even the decision in the case of *Afcons Infrastructure Ltd.* (supra) would not be of any particular advantage to the case of Respondent No.5.

45. With respect to the decision in the case of *Montecarlo Limited* (supra), we are of the view that Petitioner has not been able to demonstrate any perversity or *mala fides* nor any intention to favour any of the bidders in the award of the tender to Respondent No.5 and therefore, the said decision would not further the case of the Petitioner.

46. For the reasons aforementioned, even the decision in the case of *State of Madhya Pradesh and Anr.* (supra) does not advance the case of Respondent No.5.

47. With respect to the decision in the case of *Caretel Infotech Ltd.* (supra), as mentioned earlier, there can be no doubt about the principles enunciated therein, however, we are of the view that the

facts in that case and those in this Petition are clearly distinguishable. The present case deals with the non-submission of essential/mandatory document where there is no close scrutiny of the minute details contrary to the view of the tendering authority. We have already observed that this is a case where the tendering authority was deviating from an essential or mandatory condition which deviation was not applicable to all the bidders.

48. In view of the above discussion, we are of the view that Respondent No.5 was not eligible to bid for Zone-B in respect of tender notice no. 3 (1 to 8)/2021-2022 and the acceptance of his bid by the Respondent-Corporation deserves to be quashed and set aside.

49. We hereby quash and set aside the decision of Respondents No.2 to 4 holding Respondent No. 5 to be qualified for the said tender as being ineligible for want of a valid Contract Labour License under Section 12 of the said the Contract Labour (Regulation and Abolition) Act, 1970 and condition no. 1A of the said tender and being submitted after the date of closing of the tender as well as after the opening of the financial bid and declaration of successful bidder. We leave it to the Corporation whether the tender is to be awarded to the Petitioner,

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who is L-2 bidder or to go for a re-tender.

50. It would not be out of place to state here that contracts of this nature involving cleaning of roads and gutters fall in the realm of public health and we possibly cannot permit any compromise with that. In our view, therefore, it would be necessary and wise to scrupulously adhere to the tender conditions in award of such contracts especially considering the kind of virulent attacks including the Covid-19 Pandemic that the citizens are faced with, as prevention is always better than cure.

51. Rule is made absolute in the above terms.

52. Writ petition is accordingly allowed. There shall however be no order as to costs.

53. At the request of learned Counsel for Respondent No.5, ad-interim relief granted on 30th November, 2021 directing that the work order shall not be issued, shall operate for a period of five weeks from today.

54. Parties to act upon an authenticated copy of this order.

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(ABHAY AHUJA, J.)

(A. A. SAYED, J.)

NIKITA
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Digitally signed
by NIKITA
YOGESH
GADGIL
Date:
2022.01.21
10:54:14
+0530

This order is corrected as per speaking to the minutes of the order dated 18th January, 2022.

Nikita Gadgil

27/27