

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11706 OF 2022

M/s. Shree printers
A proprietorship firm
Through its owner
Basawaraj Sangram Nimburge
Age : 50 years, Occu : Business
R/o 142 Akshaydeep Plaza Town Centre
CIDCO Aurangabad Dist. Aurangabad

.. PETITIONER

VERSUS

The State of Maharashtra
Through Director, Food Civil Supplies
and Consumer Protection Department,
Government of Maharashtra
2nd Floor, Annex Building
Mantralaya, Mumbai – 400 032

.. RESPONDENT

...
Advocate for petitioner : Mr. P.R. Katneshwarkar with Mr. P.V. Barde
AGP for the respondent – State : Mr. A.R. Kale
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 5 DECEMBER 2022

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is aggrieved and challenging the bid corrigendum dated 03-11-2022 issued in respect of the initial invitation to offer for supply of 50 Kg Packaging Once used Serviceable empty B-Twill Jute Gunny Bags published on 20-10-2022 by the respondent by which the bidder possessing certification Micro, Small and Medium Enterprises (MSME) were exempted from depositing the Earnest Money Deposit (EMD) but by virtue of the corrigendum this stipulation regarding exemption to MSME was withdrawn in the sense that all the bidders were expected to pay the EMD.

4. Learned advocate Mr. Katneshwarkar would submit that the stipulation in the offer document exempting MSME was taken strictly in accordance with the policy decision of the Central Government dated 21-06-2010 and 23-03-2012 with a view to enhance participation of MSME in the government procurement process. Even the State Government by its revised manual published on 01-12-2016 decided to follow the same policy. The impugned corrigendum has been issued depriving a fair opportunity to MSMEs to participate in the public procurement like the petitioner. He would, therefore, submit that the corrigendum may be quashed and set aside and to accept the petitioner's bid without insisting for payment of the EMD or else directing the respondent to go for a fresh tender.

5. Learned AGP Mr. Kale referring to the affidavit-in-reply submits that the relief being claimed by the petitioner cannot be entertained in the facts and circumstances of the case. He submits that pursuant to the publication of tender, the EMD was to be deposited by 11-11-2022. The bids were scheduled to be opened on 14-11-2022. The interested bidders were expected to get themselves registered on GeM portal. The petitioner did not register himself and could not participate. He would submit that since the tender process has proceeded to the fag end, this Court should not intervene in exercise of powers under Article 226 of the Constitution of India.

6. Mr. Kale would then submit that even otherwise, the petitioner claims exemption from depositing EMD as a MSME, however, since the invitation to offer was to supply used gunny bags, the petitioner who has been engaged in manufacture and sale of only new products / goods was not even eligible to claim any such exemption from depositing the EMD. He would submit that since it was a tender for supplying used gunny bags which is beyond the purview of any MSME, the corrigendum was issued, there is no discrimination or arbitrariness.

7. Mr. Kale would further submit that similar challenge was put up by another entity at the Principal Seat in writ petition no. 13467 of 2022 (***M/s. Global Enterprises Vs. State of Maharashtra***) and by

the order dated 16-11-2022, the petition was dismissed and the same course should be followed even in the matter in hand.

8. We have considered the rival submissions and perused the papers.

9. It is pertinent to note that the petitioner is invoking the powers of this Court under Article 226 of the Constitution of India in a matter of tender where the scope for exercising the jurisdiction by this Court is very limited. It would not normally interfere with the policy decision and in the matters challenging the award of contracts by the State or public authorities. Bearing in mind these limitation reiterated by the Supreme Court from time to time, let us proceed to examine the matter in hand.

10. Though it is a matter of record that initially the notification inviting offers did stipulate that MSMEs would be exempt from depositing EMD and by virtue of the impugned corrigendum, this exemption was apparently withdrawn. The statement in the affidavit-in-reply filed by the respondent clearly indicates the reasons for issuing such corrigendum and mentions that since invitation to offer was to supply used gunny bags, being a used product, no MSME having a certification for manufacture of new goods would have been eligible and could have participated. In our view, this indicates that the

corrigendum was issued because of the special circumstances which *per se* cannot be said to be arbitrary or illegal for the reasons indicated in the affidavit-in-reply.

11. True it is that since it was E-tendering process requiring deposit of EMD, the petitioner could not have submitted his bid. However, the fact remains that soon after issuance of corrigendum he could have approached the respondent and participated in a pre-bid meeting. Though registration of petitioner in GeM portal was not mandatory, had he been registered, he could have certainly taken part in the pre-bid meeting. Such an opportunity he could not avail because he was not so registered. This is one of the grounds being taken by the respondent in the affidavit-in-reply which to our mind clearly shows that the petitioner could have participated in the pre-bid meeting but was to blame himself for losing that opportunity as he was not registered on the GeM portal.

12. Again, admittedly, the process has reached at an advanced stage and any interference in the process of procurement of the used gunny bags for the current season would not be appropriate. There is a specific statement in the affidavit-in-reply that the gunny bags are urgently needed to start purchasing *dhan* from the farmers and timely purchase is utmost necessary. This statement has gone without any demur.

13. For all these reasons, the petition is dismissed.

14. Rule is discharged.

[Y. G. KHOBRAGADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/