

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

WRIT PETITION NO. 630 OF 2022

Kolhapur Vidyut Apprentice Swayam
Rojgar Sahakari Sanstha Ltd., Kolhapur
having Office at Plot No. 9, Laxmi Vasahat,
Jawahar Nagar, Kolhapur Through its Secretary
Arif Mhamulal Tamboli

...Petitioner

Vs.

1. State of Maharashtra Through the Secretary
Department of Energy having
his office at Mantralaya
Mumbai 400 032.

2. Maharashtra State Electricity
Distribution Co. Ltd. having its office
at M.S.E.D.C.L. Head Office,
Prakashgad Bandra, Mumbai
Through its Managing Director

3. Superintendent Engineer,
Maharashtra State Electricity
Distribution Company Limited, Kolhapur
Division, having his office at Vidyut
Bhavan, Tarabai Park, Kolhapur

4. M/s All Services Global
Flat No. AG-3
Industrial Estate, Near Hub Mall
Opposite Kusum Masala
Goregaon, East Mumbai
Through its Authorized Representative

...Respondents

Mr. S. S. Patwardhan i/by Mr. Chetan G. Patil a/w Mr. M. G. Bagkar, Mr. B. R. Mandlik and Ms. Mrinal Shelar - Advocates for the Petitioner.

Mr. S. L. Babar – AGP for State – Respondent No. 1.

Mrs. A. R. S. Baxi – Advocate for Respondent Nos. 2 and 3.

Mr. Sharan Jagtiani – Sr. Counsel a/w Ms. Surabhi Agrawal, Mr. Anand Poojari and Ms. Nikita Pawar i/by S. I. Joshi & Co. - Advocate for the Respondent No. 4.

CORAM : R. D. DHANUKA AND
S. M. MODAK, JJ.

DATE : 24th FEBRUARY, 2022

ORAL JUDGMENT (PER R. D. DHANUKA) :-

. By this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for writ of certiorari for quashing and setting aside the Letter of Award dated 31st December, 2021 issued by the Respondent No. 3 in favour of the Respondent No. 4.

2. The MSEDCL Kolhapur Circle published a Tender on 15/01/2021 for providing skilled and unskilled man power on outsource basis for entire Kolhapur circle. The Petitioner, the Respondent Nos. 4 and 6 other bidders submitted their bids.

3. The technical bids were opened on 08/02/2021. Out of 8 bidders participated in the said tender, three bidders were qualified in Technical Bid which included the Respondent No. 4. In so far as, the Petitioner is concerned, the Petitioner was not qualified. Financial Bids were subsequently opened on 17/03/2021. Out of the three bidders, Respondent No. 4 was found L-1 bidder.

4. On 16/12/2021, the Respondent Nos. 2 and 3 issued a Circular and

made it clear that the said Circular was prospective in nature and is applicable to future contracts only. It is the case of the Petitioner that according to the said Circular, the modalities of awarding contract was decided.

5. The Respondent No. 2 issued Letter of Award on 31/12/2021 in favour of Respondent No. 4 being the successful bidder for a period of 12 months from 01/02/2022 to 31/03/2023. The Respondent No. 4 submitted performance Bank Guarantee in sum of Rs. 1,30,53,100/- on 15/01/2022. The Writ Petition is filed on 14/01/2022.

6. This matter appeared before this Court on 20/01/2022 when this Court was invited to certain terms and conditions of 'Standard Bidding Document' of MSEDCL. This Court directed the Respondents to file reply within one week from the date of the said Order. The Respondent Nos. 1, 2 to 4 filed affidavits opposing this petition and placed various documents on record and canvassed various submissions to controvert the submission made by the Petitioner.

7. Mr. S. S. Patwardhan, the learned counsel for the Petitioner, invited our attention to the condition No. 7 of the tender documents in support of his submission that the bid submitted by the Petitioner as well as other bidders were valid only for a period of 60 days. He submits that the 60 days had expired on 08/04/2021. After expiry of 60 days period from the

date of opening of technical bid, the Respondent Nos. 2 and 3 could not have kept the said tender alive and could not to have issued Letter of Award of 31/12/2021 in favour of Respondent No. 4. He submits that on this ground itself the Letter of Award issued by the Respondent No. 3 in favour of Respondent No. 4 deserves to be quashed and set aside.

8. The next submission of the learned counsel for the Petitioner is that Petitioner had not issued any consent for keeping its tender alive beyond the period of 60 days from the date of opening technical bid. He submits that the Respondents also have not produced any such consent in writing from the Respondent No. 4 keeping its tender alive beyond the period of 60 days and till the date of Letter of Award issued by the Respondent No. 2 in favour of respondent No. 4.

9. It is submitted that issuance of Letter of Award is expressly in breach of said Circular dated 16/12/2021. He submits that the contract even if could be awarded, it could be only for the financial year 2021-22, whereas the Letter of Award issued in favour of the Respondent No. 4 would indicate that said award is for later period.

10. Mr. Sharan Jagtiani, the learned Senior Counsel for the Respondent No. 4, on the other hand submits that under Clause 7 of the tender the period of validity of Bid was to remain valid for a period of 60 days after the date of opening of Technical bids. He submits that admittedly in this

case, the bid of the Petitioner was already rejected as technical non compliant and thus the Petitioner has no locus to challenge the Letter of award in favour of Respondent No. 4 by the Respondent No. 2. He submits that in the entire tender there is no time prescribed for opening of financial bid or for issuance of Letter of Award.

11. It is submitted by the learned Senior counsel that the financial bid was admittedly opened on 17/03/2021. Only 3 bidders were successful in their technical bid and out of those 3 bidders, the Respondent No. 4 being the lowest bidder has been rightly issued the Letter of Award.

12. The learned Senior Counsel placed reliance on paragraph No. 2 of the affidavit-in-reply filed by the Respondent No. 3 in support of his submission that the Respondent No. 3 has rightly explained the delay in issuing Letter of Award in favour of Respondent No. 4 due to various administrative reasons. He submits that his client has not withdrawn its financial commitment even after expiry of 60 days from the date of opening of technical bid.

13. In so far as, the period of one year prescribed under the Letter of Award is concerned, it is submitted by the learned Senior Counsel that the work order has to be for the period of one year. Work Order cannot be for the period of two or three months as sought to be canvassed by the learned counsel for the Petitioner.

14. It is submitted by the learned Senior Counsel for the Petitioner that his client has already submitted the performance Bank Guarantee in the sum of Rs. 1,30,53,100/-.

15. Mrs. A. R. S. Baxi, the learned counsel for the Respondent Nos. 2 and 3 submits that there is no time prescribed for opening financial bid as well as for issuance of Letter of Award. She submits that technical bid of the Petitioner was already rejected which is not impugned by the Petitioner in this petition. The learned counsel submits that due to various administrative reasons which are already explained in the affidavit-in-reply, the letter of award could not be issued within a short span after opening the financial bid.

16. The learned counsel placed reliance on Note No. 2 of Section-I of the tender and submits that it is specifically specified that the work order has to be for a period of 12 months.

17. It is not in dispute that the technical bid of the Petitioner was rejected on 08/02/2021. The Petitioner has not impugned rejection of its technical bid by the Respondent No. 3. Financial bids of 3 bidders were opened on 17/03/2021.

18. Mr. S. S. Patwardhan, the learned counsel for the Petitioner could not point out before this Court whether his client had applied for refund of earnest money deposit though remained deposited with Respondent

No. 3 after expiry of period of 60 days of rejection of its technical bid.

19. In so far as the submission of Mr. S. S. Patwardhan, the learned counsel for the Petitioner that the Letter of Award could not have been issued after 60 days from the date of opening of technical bid is concerned, a perusal of Clause 7 clearly indicates that under the said clause, all the bidders were required to keep their financial commitment valid for a period of 60 days from the date of opening of technical bids. The said clause cannot be construed to say that the work Order was to be issued within the period 60 days from the date of opening of technical bids. In the tender document, there is no time prescribed for the opening of financial bid or for issuance of Work Order.

20. Be that as it may, it is clear that the Petitioner also did not apply for refund of deposit after expiry of 60 days from the date of opening of technical bids. In any event, since the Petitioner has not challenged the rejection of its technical in this petition, the Petitioner cannot challenge the Letter of Award in favour of Respondent No. 4 who was found successful in the financial bid.

21. In so far as the submission of the learned counsel for the Petitioner that the Letter of Award is in breach of the Circular issued by the Respondent No. 2 is concerned, a perusal of the said circular clearly indicates that the Respondent No. 3 has proposed to change the

modalities of contract with prospective effect and not retrospective effect. The said circular will not apply to the tenders already invited prior to the date of issuance of the said circular. There is thus no substance in this submission of the learned counsel for the Petitioner.

22. In so far as the submission of the learned counsel for the Petitioner that the Work Order could not have been issued for the period subsequent to financial year 2021-2022 is concerned, in our view there is no merit in the submission of the learned counsel. We are satisfied with the reasons recorded by the Respondent Nos. 2 and 3 in its affidavit explaining the delay on account of administrative reasons in issuing Letter of Award in favour of Respondent No. 4. If the arguments of the learned counsel for the Petitioner is accepted that the Letter of Award could be only for the financial year 2021-22, that would be contrary to the condition that the work Order has to be for a period of one year.

23. There is no dispute that the Work Order can be issued only after the financial bid of bidder is finalized and not prior thereto. The Work Order can be issued only after administrative decision is taken by the Respondent Nos. 2 and 3 to award contract to the successful bidder.

24. The Respondent No. 4 has already submitted performance Bank Guarantee in sum of Rs. 1,30,53,100/-. In our view the Petitioner has not made out any case for interference in the issuance of Letter of Award in

favour of Respondent No. 4. The Petition is totally devoid of merit and is accordingly dismissed.

25. The ad-interim granted by this Court is stands vacated forthwith.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]