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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3583 OF 2022

Maharashtra State Contractors' Association ...Petitioners
through State President Milind Bhosale & Anr
Versus
State of Maharashtra & Ors ...Respondents

Mr Bharat A Tajane, for the Petitioners.
Ms Neha Bhide, AGP, for the Respondent-State.

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 29th March 2022

PC:-

1. Heard.

2. The Petitioners say that they are the Associations of Contractors registered as Trade Union. They ask that we exercise our writ jurisdiction to quash or stay an E-tender No.10 for year 2021-2022 dated 16th March 2022. This has been issued by the Government's Department of Water Resources, Bhima Development Division No.2, Solapur. A copy is at Exhibit "G" to the Petition from page 41 onwards.

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3. We straightaway turn to page 43 which is a listing until page 47 of the works by name. From 1 to 55 all of these relate to the Ujani project. Item 56, 57, 58 and 59 relate to other projects.

4. The Petition says that the E-tender impermissibly allows the clubbing of works. According to the Petitioners, the E-tender violates the Government Resolution dated 11th February 2008. Work should be allotted in a proportion of 1/3-1/3-1/3 to Labour Cooperative Societies, unemployed Engineer Contractors and other contractors. If not quashed, the E-tender will deprive the Petitioners and others like them of their source of livelihood.

5. Mr Tajane invites our attention to grounds (e) and (f) at pages 10 and 11 and then to the GR in question at page 18 of 11th January 2018. According to him, this GR does not permit the clubbing of works except in one division. This does not appear to us to be a correct reading of the GR. Clubbing is specifically contemplated by the GR itself in sub-item (ii). We believe that the E-tender will fall in this clause and not in clause (i) which relates to large projects. Merely because the aggregate of clubbing is of large value does not mean that the project becomes “a large project” as opposed to medium project which falls in clause (ii). This in any case is so contentious an issue that it is impossible to grant the Petitioners relief on this ground alone.

6. The next submission is that the E-tender violates another GR at page 31. This is dated 27th September 2018. But this is a GR

of the Public Works Department. We are concerned here with the Water Resources Department and its GR.

7. Finally, Mr Tajane invites our attention to an order of 21st September 2018 in a Writ Petition No.10334 of 2018 filed by these Petitioners. There again there was a question of clubbing of works that in regard to other circulars. The relevant clause prohibited clubbing if the works were distinctly different and not on the same road. Obviously that was in a context of a road works contract and the GR was in that context. The Court required the Government to take a decision on the representation in this behalf.

8. We find it very strange that while dealing with a project from the Water Resources Department, there is first reference to a Water Resources Department's GR. When we expressed our inability to accept the Petitioners' submissions, then reference was made to a GR from the PWD. When that did not work, our attention was invited to a GR in relation to road works. Obviously each of these types of works has received different considerations. The Petitioners cannot swing from GR to GR like this hoping one of them will 'stick'.

9. It would not be out of place to note that one of the considerations that evidently weighs with the Government is cost efficiency. Clubbing work is obviously most cost-efficient than issuing multiple tenders with a differentiation for different classes of bidders. The Petitioners seem unable to understand this. For a single project, the costs of coordinating tenders and tender works

between different agencies is likely to be very difficult apart from leading to operational problems and hugely inflated costs at the public expense.

10. The writ jurisdiction is not meant to engage in these nice distinctions. Unless it is shown that the E-tender is facially violative of a policy or a statute, a writ Court cannot and will not interfere. The interpretation of a policy and of the tender is a matter best left to the tendering authority. At best, a Court will interfere where it find that there is manifest arbitrariness or a violation of law.

11. We find no substance in the Petition. It is rejected. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)