

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 697 OF 2022

M/s Mansha Traders, through its Proprietor Anil S/o Dadarao Bhoyar,
..VS..

Maharashtra State Power General Co. Ltd., MAHAGENCO, Koradi Thermal Power
Station, TPS Koradi, Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D. N. Dani, Advocate for petitioner,

CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED : 10.02.2022

1. Hearing was conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.
2. Heard learned counsel for the petitioner.
3. The contention is that the petitioner has been awarded a contract for Deployment of School Bus Drivers and Cleaners on the buses purchased by the respondent and the award of contract has come with several terms and conditions, in respect of which, the petitioner has no objection except for the condition No.9 of the tender notice.

4. Learned counsel for the petitioner further submits that this condition, is to the effect “it is mandatory to keep existing driver, if no any misbehaviour, police complaint and medical problem”, and according to learned counsel, this condition is highly unreasonable and in violation of principles of unreasonableness. It is submitted that by virtue of an award of the contract, the petitioner has occupied the position of a master and therefore, it is the choice of a master like the petitioner, whom to engage and whom not to engage as servant or driver or cleaner. Learned counsel for the petitioner also submits that a protest to condition No.9 was already made by the petitioner on 07.12.2020, much before the issuance of the work order dated 10.07.2021.

5. In this case, it is an admitted position, as submitted by learned counsel for the petitioner, that after issuance of the tender notice, of which, condition No.9 was an essential part, the petitioner submitted its bid on 04.08.2020. At the time of submission of the bid, it is also admitted fact, the petitioner did not raise any objection to condition No.9. Thus, there is a participation in the tender process by the petitioner without any protest and then, the well settled law would come into play. The well settled law would tell us that after having taken part in the tender process, a tenderer cannot be permitted to turn around and challenge the legality or otherwise of any of the tender conditions. This is what has happened in the present case and, therefore, on this

ground alone, which is the ground of non maintainability of the petition, the petition deserves to be dismissed.

6. The learned counsel for the petitioner has said something about the lodging of the protest by the petitioner to condition No.9 before issuance of the work order. With due respect, we must say, the submission is factually incorrect. This so called letter, as pointed out to us by the learned counsel, is at (Page No.32). There is no mention therein of condition No.9 of the tender notice in any manner. This letter does not state that condition No.9 is illegal or unreasonable and cannot bind the petitioner. On the contrary, the statements made in the first paragraph of this letter are interesting and they read thus :-

“With reference to aforesaid letter we would like to bring to your kind notice that we are completely bind to follow the terms and conditions mentioned in the said tender. We assure you that we are ready to pay the drivers salary as per minimum wages”.

7. It would be clear from the said statements that the petitioner has admitted that the petitioner is completely bound to follow the terms and conditions mentioned in the tender notice.

8. So, the position is that by taking part in the tender process, the petitioner can be understood to have accepted the terms and conditions of the tender notice

and by the aforestated statements made in the letter dated 07.12.2020, it can be further said that the petitioner has confirmed the fact that the petitioner is bound to follow the terms and conditions of the tender notice.

9. In these circumstances, the petitioner cannot be permitted to take a reverse turn so as to object the validity or otherwise of any of the terms and conditions of the tender notice.

10. As regards the right of a master like the petitioner to engage his own servants as per his choice, we must state that this right has been waived by the petitioner when the petitioner accepted the mandatory condition of continuance of the existing drivers as contained in Section – IV, Clause – A(9) of the tender notice (Page No.27). The right of a master to engage a servant of his choice is a common law right and therefore, it is not something which cannot be waived by a master like the petitioner and the petitioner has indeed waived its such right in this case. Once there is a permissible waiver of legal right, there can be heard no objection on the ground of unreasonableness of any tender condition adversely affecting the right of a master, much less on the ground of Wednesbury unreasonableness.

11. In the result, the petition deserves to be summarily dismissed. The Writ Petition stands dismissed accordingly. No costs.

JUDGE

JUDGE

Kirtak