

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**Writ Petition No. 12110 / 2023**

Sayed Asif Sayed Habib (Proprietor)  
M/S. K.G.N. Caterers and Traders  
Netaji Ward, Old Chirghar Plot, Yatra Road,  
Warora, Tq. Warora, Dist. Chandrapur.  
Maharashtra.

**...Petitioner**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Women and Child Welfare Department,  
Mantralaya, Mumbai.
2. The Chief Executive Officer,  
Zilla Parishad, Ahmednagar.
3. The District Program Officer,  
Women and Child Welfare Department,  
Zilla Parishad, Ahmednagar.

**...Respondents**

— — —  
Mr. Rahul M. Jade, Advocate for the Petitioner.

Mr. A. A. Jagatkar, AGP for Respondent No.1/State.

Mr. S. B. Parnere, Advocate for Respondent No.2 and 3.

— — —  
**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**DATE : 3 OCTOBER 2023.**

**JUDGMENT [ SHAILESH P. BRAHME, J. ] :**

. Rule. Rule is made returnable forthwith. Heard learned Counsel for the respective parties finally at the admission stage.

2. The petitioner is challenging his disqualification in the technical bid communicated vide letter dated 07.09.2023. He has been eliminated from the tender process undertaken by the respondent no.2 and 3.

3. It is the case of the petitioner that on 17.07.2023 e-tender notice was issued by the respondent no.2 and 3 for supply of extra food multi-meal biscuits to malnourished and severely malnourished (SAM-MAAM) children in rural areas of Zilla Parishad Ahmednagar for the year 2023-2024. The petitioner submitted his offer under name and style M/S K.G.N. Caterers and Traders. All the necessary documents regarding qualification were uploaded. The samples of the product was also given for testing. On 07.08.2023, the bid of the petitioner was received.

4. The technical assessment of the bid of the petitioner and other six bidders was conducted on 07.09.2023. The petitioner was declared to be disqualified in the technical bid for the following reasons :

(i) There was no experience of supplying extra food Multi Millet Nutritious Biscuits.

(ii) The petitioner did not tender sample of manufacturer New Janta Bakery instead of that the sample manufactured by the petitioner was tendered.

(iii) Petitioner did not produce valid licence for manufacturing issued by the Food Safety and Standards Authority of India (hereinafter referred as 'FSSAI').

(iv) The ingredients of the biscuits were not mentioned on the cover.

5. The learned Counsel for the petitioner submits that the disqualification of the petitioner is violative of Government Resolutions dated 01.12.2016 and 27.09.2018. It is submitted that the technical bid was rejected on the grounds which are not qualifying terms and conditions of the tender, hence it is arbitrary. The technical bid was rejected on 07.09.2023 and on the same day financial bid was opened without extending any opportunity to the petitioner.

6. The learned Counsel for the petitioner would submit that with a mala fide intention, the petitioner was disqualified strategically to favour Bhumata Food Products. The representations of the petitioner after disqualification were not considered. The samples of the biscuits submitted by the petitioner were not forwarded for testing. The petitioner was having experience of supply of the biscuits under different scheme of the Government, but still he was disqualified illegally. Lastly, it is urged that action in question is against the tender condition.

7. The respondent no.2 and 3 have filed affidavit-in-reply. The contentions and the submissions of the petitioner are opposed. It is stated that the Government Resolution dated 27.09.2018 is not applicable to the tender process. After floating e-tender notice immediately on 21.07.2023, corrigendum was issued for condition no.15 regarding experience. It is stated that petitioner was not the manufacturer of the product but a distributor. It was represented that it was manufacturer without there being valid licence. The sample which was supplied, was not that of actual manufacturer New Janta Bakery.

8. The learned Advocate for respondent no.2 and 3 submits that the petitioner was not having experience as contemplated by condition no.15. The petitioner was not holding licence of FSSAI for the purpose of manufacturing. The petitioner misrepresented that it was manufacturer by tendering sample under its name and style. He would submit that there was no provision of hearing the tenderers. The reliance is placed upon the judgment rendered by the High Court in the matter of **M/S N.G. Projects Limited Vs. M/S. Vinod Kumar Jain & Ors., reported in 2022 LiveLaw (SC) 302**. It is submitted that the petition is liable to be dismissed because no case is made out for exercising tender jurisdiction.

9. Having heard rival submissions, the short question falls for the consideration is as to whether disqualification of the petitioner is in accordance with law or not. Before advertng to the merits of the matter, we propose to refer the scope of our jurisdiction as laid down in the matters of **M/S N.G. Projects Limited (Supra)** and **Tata Motors Limited Vs. The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Ors.; AIR 2023 SC 2717**.

. Paragraph No. 23 of the judgment in the matter of **M/S N.G. Projects Limited (Supra)** is as under :

*“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in*

interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work."

. Paragraph No. 53 of the judgment in the matter of TATA Motors Limited (Supra) is as under :

"53. The law relating to award of contract by the State and public sector corporations was reviewed in [Air India Ltd. v. Cochin International Airport Ltd.](#), reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under [Article 226](#) with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

10. It is relevant to refer to the condition no.3, 4, 5 and 15 which are as follows :

३. निविदाधारक जर उत्पादक असेल तर त्याचे उत्पादक असल्याबाबतचे नोंदणी प्रमाणपत्र जोडणे आवश्यक आहे.
४. निविदाधारकाने उत्पादक असलेबाबतची सक्षमप्राधिकाऱ्याचे नोंदणी प्रमाणपत्र निविदेसोबत जोडणे आवश्यक आहे. उत्पादक कंपनीचे व्यापारी चिन्ह (Brand Name) नोंदणीकृत असल्यास तसे प्रमाणपत्र सादर करणे आवश्यक आहे.
५. जर निविदाधारक अधिकृत विक्रेता / पुरवठादार असल्यास तसे उत्पादकाचे अधिकृत विक्रेता असल्याचे प्रमाणपत्र निविदेसोबत जोडणे आवश्यक आहे. तसेच उत्पादकाचे FSSAI प्रमाणपत्र जोडणेत यावे.
१५. निविदाधारकाने अतिरिक्त आहारामध्ये निविदेमध्ये समाविष्ट असणाऱ्या घटकांचा प्रशासकीय स्तरावर पुरवठा केलेचा अनुभव असणे आवश्यक आहे. त्या बाबत पुरवठा आदेश किंवा प्रमाणपत्राच्या प्रती निविदेत अपलोड करणे बंधनकारक आहे.

11. The learned Counsel for the petitioner submits that there is violation of Government Resolution dated 01.12.2016 and Government Resolution dated 27.09.2018 which are produced on record. Government Resolution dated 01.12.2016 pertains to the modalities for purchasing the goods items required for the offices of local bodies, Government and Semi Government entities etc. No specific provision of the resolution has been shown to us by the petitioner to make out a case of its violation.

12. Government Resolution dated 27.09.2018 pertains to e-tender process to be undertaken by Public Works Department (PWD). The concerned department undertakes construction activities and the resolution is designed to regulate the tender process of that department from that point of view. The learned Counsel for the petitioner is unable

to show that the said procedure is applicable to the present tender process. We find that the respondents have rightly contended that Government Resolution dated 27.09.2018 is not applicable to the tender process in question.

13. It is submitted by the learned Counsel for the petitioner that on 07.09.2023, petitioner's technical bid was rejected and thereafter no opportunity was given to him. On the same day, financial bid was opened. The representations made by the petitioners for recalling the decision taken against him were not attended to.

14. We have gone through the tender conditions produced on record. The elaborate procedure is stipulated for opening of technical bid and thereafter financial bid. We do not find that any provision is incorporated to extend opportunity of hearing to any of the bidders at the time of assessment of technical bid or thereafter in case of rejection. In the absence of any violation of the condition or the procedure, it cannot be said that there has been any procedural impropriety calling for interference under Article 226 of the Constitution of India.

15. The learned Advocate for respondent no.2 and 3 would submit that the condition no.14 explicitly states that there would not be any communication regarding rejection of offer. The respondents were not bound to hear the petitioner after disqualification in the technical bid. The respondents are justified in not responding to the representation of the petitioner.

16. The reasons for disqualification are as follows :

- (i) There was no experience of supplying extra food Multi Millet Nutritious Biscuits.
- (ii) The petitioner did not tender sample of manufacturer New Janta Bakery instead of that the sample manufactured by the petitioner was tendered.
- (iii) Petitioner did not produce valid licence for manufacturing issued by the Food Safety and Standards Authority of India (hereinafter referred as 'FSSAI').
- (iv) The ingredients of the biscuits were not mentioned on the cover.

17. The learned Counsel for the petitioner is unable to point out that the document showing experience of supply of multi millet biscuits to any Government undertaking, was uploaded. It is only contention of the petitioner that it had such a experience. The requirement of experience of supply of extra food multi meal biscuits is not demonstrated. We cannot accept the submissions of the petitioner in that regard.

18. The focal ground for disqualification is that the petitioner is not a manufacturer. The manufacturer was New Janta Bakery. The petitioner was not holding valid licence of FSSAI. The licence was not uploaded. The samples of the biscuits were tendered mentioning that the petitioner was the manufacturer. There is a letter addressed by manufacturer New Janta Bakery dated 09.08.2023 assuring to supply the product to the

petitioner. We find that the petitioner has violated condition no.3, 4 and 5. We do not find any illegality or arbitrariness in disqualifying the petitioner for not fulfilling qualifying condition.

19. The learned Counsel for the respondent no.2 and 3 has placed on record during the course of hearing coloured photocopies of the representation made by the petitioner. It discloses M/S K.G.N. Caterers and Traders as the manufacturer. Whereas it is the case of the petitioner that it is just distributor and manufacturer is New Janta Bakery. Another coloured photograph shows ingredients of the product. We find substance in the submissions of the learned Counsel for the respondent no.2 and 3 that required documents were not uploaded and there was misrepresentation by the petitioner.

20. For the reasons stated above, we do not find that there is any arbitrariness, mala fides or procedural impropriety in disqualifying the petitioner. We are bound by the law laid down by the Supreme Court in the matters of M/S N.G. Projects Limited and Tata Motors Limited, cited supra. The decision making process is in consonance with the tender condition. Keeping the larger interest in mind, we restrain ourselves from interfering with the decision under challenge. The writ petition is dismissed. Rule is discharged. There shall be no order as to costs.

**[SHAILESH P. BRAHME, J.]**

**[MANGESH S. PATIL, J.]**