

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 11109 OF 2022

1. Shrikrishna Vijatantri Apprenticeship Sushikshit
Berojagar Seva Sahakari Sanstha M. Jalna
Near Ganpati Netralaya, District Jalna, through
its Secretary, Mr. Sureshsingh Laxmansingh Rajput
2. Vidhyut Mandal Maji App. S.B.S.S. Ltd.
C/o Hiwarkheda Road, Bholeshwar Colony,
Opp. Girija Mangal Karyalaya, Kannad - 431 103
District Aurangabad, through its authorized
signatory Mr Pradip S/o. Bhaiyyasaheb Deshmukh
3. Nexus Multi Services Corporation
A Proprietorship firm, through its proprietor
Through its Authorised Signatory
Mr. Omprakash S/o. Prasad Singh, having his
office at 13, Muthiyan Corner, Peer Bazaar Road,
Dashmesh Nagar, Aurangabad – 431 005. ...Petitioners

Versus

1. Maharashtra State Electricity Distribution Co. Ltd.,
Through its Superintendent Engineer,
Circle office Aurangabad Rural
District Aurangabad
2. Maharashtra State Electricity Distribution Co. Ltd.
Through its Joint Managing Director, Regional
Office Aurangabad, Taluka and
District Aurangabad ...Respondents

Mr Amit A. Yadkikar, Advocate for Petitioners
Mr S.V. Munde, Advocate for Respondent Nos. 1 and 2
Mr A.R. Syed, Advocate for intervenor

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 27-01-2023
PRONOUNCED ON : 07-02-2023**

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. The petitioners have approached this Court under Article 226 of
the Constitution of India praying for issuing writ against respondent No.1 /

Maharashtra State Electricity Distribution Co. Ltd., (hereinafter referred to as “ the MSEDCL” for the sake of brevity).

2. The petitioners have prayed as under :-

(b) By issuing a writ of Mandamus or in the nature of Mandamus or any other suitable writ, direction or order the Respondent No.01 may kindly be directed to not conduct any further lottery draw with respect to Tender No. SE/ARC/HR/T-01/2022-23; Tender No. SE/ARC/HR/T-02/2022-23; Tender No. SE/ARC/HR/T-03/2022-23 and Tender No. SE/ARC/HR/T-04/2022-23.

(c) By issuing a writ of Mandamus or in the nature of Mandamus or any other suitable writ, direction or order the Respondent No.01 may kindly be directed to issue letters of award in accordance with the lottery draw drawn on 13th September, 2022.

3. The petitioners Nos. 1 and 2 (registered co-operative societies) and petitioner No. 3 (partnership firm) have experience of execution of various contracts with respondents for supply of manpower. The respondent No. 1 floated four tenders under tender notice dated 14-06-2022. Petitioners submitted their bids. The details of the tenders are as under:-

(i) Tender No. SE/ARC/T-01/2022-23; for supply of outsourced technicians under Aurangabad Rural Division No.1.

(ii) Tender No. SE/ARC/T-02/2022-23; for supply of outsourced technicians under Aurangabad Rural Division No. 2.

(iii) Tender No. SE/ARC/T-03/2022-23; for supply of outsourced technicians under Kannad Division.

(iv) Tender No. SE/ARC/T-04/2022-23; for supply of outsourced technicians under Sillod Division.

4. Petitioners contend that around 7 bidders for each tender have

been declared qualified in the technical bid. However, all of them have quoted similar financial bids. The respondent No. 2 had issued a circular dated 27-04-2022 to deal with such contingency, whereby it is directed that the work orders to be issued to the participants of the tender process on the basis of a lottery draw. It is further clarified that, if total number of outsourced electrical assistants is less than 100, then a single bidder should be selected by lottery draw and if such number is more than 100, two bidders shall be selected and awarded work equally.

5. On 13th September 2022, the respondent No.1 issued a communication through e-mail to the participants/bidders inviting them for draw of lottery organized in his office at Chikalthana MIDC, Aurangabad. The lottery draw was conducted by the respondent No.1 at 6.00 p.m. The process has been video graphed. The petitioners are lucky winners of the draw as against the work Nos. 2, 3 and 4. According to the petitioners, since they are selected by the lucky draw, they were entitled for the letter of award.

6. It is further contention of the petitioners that on 2nd October, 2022, the respondent No.1 issued e-mail informing that the re-lottery is organized in the office of respondent No.1 at 10.00 a.m. on 04-10-2022. The petitioners raised the objection to said communication and pointed out that already they have been declared successful in the lucky draw dated 13-09-2022, and there is no reason for further re-lottery. The petitioners were shocked to receive further communication stating that lottery organized on 04-11-2022 at 4.00 p.m. is preponed to 03-11-2022 at 17.30 hours.

7. The respondent Nos. 1 and 2 filed affidavit-in-reply contending that the respondent No.1 had received complaints from the qualified bidders, objecting to the process conducted on 13-09-2022. According to bidders, sufficient time was not provided to them for attending the lottery. It has been conducted behind their back. Their offices are stations 100 to 300 Km from the office of respondent No.1. Sufficient time ought to have been given to the qualified bidders to attend the lottery with a view to maintain transparency.

8. It is further contended that respondent No.1 received a communication dated 28-09-2022 from the General Manager (Finance and Accounts) informing that the Director, MSEDCL has instructed to conduct re-lottery for tender Nos. 1 to 4 with a view to maintain image of MSEDCL and to avoid the litigation. It was instructed that the bidders shall be intimated regarding the lottery process at least one day in advance and entire process shall be video recorded. In this background, the re-lottery has been arranged under the impugned communication dated 02-11-2022 and the bidders were invited to attend the process on 03-11-2022 at around 17.30 hours. It is the contention of the respondents that the administrative decision has been taken to maintain the transparency. No *mala fides* are attributed against the respondents and the petitioners are also entitled to participate in the re-lottery along with the other bidders and have an equal opportunity of allotment of work under the tender.

9. We have heard the learned advocate appearing for the respective parties. We have permitted the learned advocate for applicants/

intervenors in Civil Application No. 990/2023 to make his submission, since the applicants/intervenors are participants of the same tender.

10. Mr Amit Yadkikar, learned counsel appearing for the petitioners would submit that the petitioners are experienced contractors. They have successfully executed the contracts for supply of manpower to respondent No.1. They have participated in the tender process in pursuance of the tender notice issued by the respondent No.1. They have submitted their respective bids. They were found successful in technical bids. Thereafter, financial bids were opened. Since, the bids of all participating contractors were for same value, respondent No.1 as per procedure prescribed under circular dated 27-04-2022 invited them for lottery. The petitioners were found successful. The entire process of lottery has been video-graphed. There is nothing to show that the lottery was vulnerable to alleged *mala fides* or foul play. It was for the respondents to act upon result of lottery and issue award letter to the petitioners. However, the re-lottery has been directed without justifiable reason.

11. The learned advocate Mr Sanjay Mundhe appearing for respondent Nos. 1 to 4 would submit that large number of participants could not attend the lottery because of the paucity of time. The communications were issued to all the bidders through e-mail. However, sufficient time gap was not provided for attending the lottery. The majority of the participants could not attend the lottery. They have raised the objections vindicating their grievance through representations made to the respondent authorities and requested for re-lottery. The respondents have

taken administrative decision to maintain the transparency and sanctity of the procedure of the lottery prescribed under the circular. He would submit that in absence of any *mala fides*, the petitioners have no cause of action to challenge the decision of the re-lottery. He would submit that no right has been accrued to the petitioners. The respondents have reserved the right to withdraw from the process from any point of time under specific clause. However, only the re-lottery has been directed with intention to provide opportunity to all the successful participating bidders who have crossed the technical as well as financial bids. The petitioners have no reason to raise any grievance since they would be getting fair opportunity in the re-lottery. Mr Mundhe would further point out that, the petitioner No. 2 under his communication had raised the objection complaining that sufficient time was not provided to attend the lottery. However, after finding himself as lucky winner, he is challenging the decision of the respondent authorities. Mr Syed, learned advocate appearing for the intervenors supported the stand taken by the respondents and submitted that the re-lottery is necessary in the facts and circumstances of the case.

12. It is not in dispute that the petitioners as well as the other contractors have participated in the tender process. Almost 8 bidders passed the technical bid. On opening of the financial bids, the value of the bid work was found equal from all the bidders. The respondent No. 2 has evolved the method of lottery system under the circular dated 27-04-2022. It prescribes modalities for organizing lottery in the situations of the tie among the bidders. It appears that the respondents were required to resort to the lottery since similar bids were received and there was no other way

but to go for the lottery. It is pertinent to note here that the parties are *ad idem* so far as the lottery system is concerned, though it is not provided under the tender notice.

13. The petitioners had received the e-mail on 13-09-2022 inviting them to attend the lottery arranged at the office of respondent No.1 at 6.00 p.m. It shows that e-mail was delivered to the petitioner No.1 at about 2.00 pm. As such, the time gap of less than two hours was provided. The same is the case in respect of other bidders. However, with this short notice, the lottery was conducted and the result of such lottery was declared in which the petitioners were shown to be winners for the respective works. Perusal of the communication dated 22-09-2022 shows that in response to the e-mail dated 13-09-2022, the representatives of M/s Nexus Multi Services, Aurangabad, M/s G.A. Digital Web World Pvt. Ltd., M/s Sonu Services, Solapur were present. The four successful bidders were identified through the lottery. However, 8 participants of the tender objected to the decision for want of transparency and fundamental defects in the procedure adopted by the respondents. The objections are favourably considered by the respondents and impugned directions are issued for re-lottery.

14. After considering the aforesaid factual aspects of the matter, we find that the tendering authority had valid reason to direct re-lottery. It is trite that the public authority which is issuing tender is required to follow the principles of fairness and has to maintain transparency during the process. The bidder must have opportunity to participate at all important steps of tender process. If the respondents were to adopt the lottery

system, it was expected that all the bidders were given sufficient opportunity to participate in the process and get the satisfaction of the transparent and fair procedure that was to be adopted by the authority.

15. In the present case, the bidders from Ambajogai, Solapur, Beed etc., having their offices at the distance of 125 to 300 Kms. They couldn't attend lottery due to short notice. Ideally one must get advance notice of 24 hours. The respondent authority while issuing communication regarding holding of lottery, failed to provide sufficient time to the bidders so that they could attend the lottery. The bidders who could not attend the lottery because of paucity of time, have raised their grievances. The good-sense prevailed over the respondent and they have taken the decision of re-lottery. Such decision cannot be termed as arbitrary only because the petitioners were found to be successful in the earlier lottery which was sans fair play. Even otherwise, only because the petitioners were successful in the lottery, no vested right for allotment of tender has been created in their favour. The petitioners could not demonstrate any *mala fides* in the action of re-lottery proposed by the respondents. The petitioners would also be getting an opportunity to participate in re-lottery and have chance of allotment of work along with other bidders.

16. It is trite that in the matter of administrative decisions, the courts are not expected to substitute its own opinion. As observed by the Supreme Court in the matter of ***N.G. Projects Limited Vs. Vinod Kumar Jain and Others reported in 2022 (6) SCC 127***, a fair play in the joints is a necessary concomitant for an administrative body functioning in an

administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides. In the present case, we do not find any material to infer *mala fides* in the administrative decision or arbitrariness in impugned action on the part of the respondent authorities.

17. The upshot of the discussion above leads us to conclude that the petition is devoid of merits.

18. Hence, the writ petition is dismissed with no order as to costs.

[S.G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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