



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15538 OF 2023

Raut Enterprises (OPC) Pvt. Ltd.,
Through its Proprietor,
Arun Narayan Raut,
Age : 32 years, Occ : Labour provider
R/o. At Post Kati, Tal. Indapur,
District : Pune

.. Petitioner

Versus

Maharashtra State Electricity Distribution
Company Limited
(A Govt. of Maharashtra Undertaking)
Through Office of Director and another

.. Respondents

...
Advocate for petitioner : Mr. Ajay T. Kanawade
AGP for the respondent – State : Mr. K.N. Lokhande
...

**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 19 DECEMBER 2023

Per court :

Heard learned advocate for the petitioner.

2. The petitioner is a private limited company, stated to be a Micro, Small and Medium Enterprises (**MSME**). It is seeking relaxation of certain terms and conditions from the tender notice published by the respondent no. 2 and is making following prayer :-

“A. By issuing an appropriate writ, Order or direction in the nature of mandamus or any other writ, Order or direction, directing the Respondent No. 2 to allow the relaxation of past performance, Bid security amount, turnover for Start-up/MSME in order to enable them to participate in the tender No. SE/CSUC/T-12/2023-2024 providing manpower

(Operators) on Outsourced basis in Ch. Sambhajinagar Urban Division No. II Under Urban Circle dated 22.11.2023; and/or"

3. Learned advocate for the petitioner adverts our attention to the government policy notified by the Central government in respect of the MSMEs dated 10-03-2016 thereby stipulating that in order to increase participation of start-ups and MSMEs, there could be relaxation in respect of turnover, past experience etc. He would submit that in spite of such avowed stand of the Union of India, the impugned tender notice does not extend any such relaxation to MSME like the petitioner.

4. Learned advocate for the petitioner submits that already the petitioner has participated in the tender process by submitting an offer, however, in all probability, it is likely to be rejected at the technical evaluation for want of necessary compliances in accordance with the tender notice about which the petitioner is seeking relaxation.

5. Having heard the learned advocate for the petitioner and having perused the papers, it does appear that the Central government has come out with a circular declaring a policy whereby the MSMEs are expected to be treated beneficially in the matter of public procurement, however, admittedly, it is merely a circular issued by the Central government and will not affect the discretion and decision making power of the respondents 1 and 2.

6. Besides, in spite of being aware of the shortcomings, which in all probability, are likely to render petitioner ineligible if it has tendered the offer, on our query as to if any such request was made by raising an issue in the pre-bid meeting that was to be held on 24-11-2023, the learned advocate for the petitioner would simply submit that the issue was raised orally.

7. If the whole purpose of having a pre-bid meeting is to meet such contingency, the petitioner which is a private limited company was expected to raise the issue atleast in the pre-bid meeting in a concrete form. It could have solicited relief and on failure thereof, could have approached the Court of law in time.

8. As per the tender program, the date for opening of the technical bid was fixed as 30-11-2023. Learned advocate also informs that accordingly, the technical bids have been opened and the process is going on. If such is the state-of-affairs, we are afraid the petitioner is not entitled to seek any *mandamus* for relaxation of the condition.

9. The petition is dismissed.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/