

jvs

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**WRIT PETITION NO. 6812 OF 2021
WITH
INTERIM APPLICATION NO. 3354 OF 2021**

M/s. S. B. Konapure through Partners } and PoA Shivanand Basappa Konapure }	Petitioner
versus	
The State of Maharashtra & Ors. }	Respondents

Mr. V. M. Parsurami with Mr. Sudhir Halli
for the petitioner.

Mr. A. A. Kumbhakoni, Senior Advocate with
Mr. P. P. Kakade, Government Pleader, Mr.
Akshay Shinde, 'B' Panel Counsel and Mr.
Ravi Kadam, AGP for State.

**CORAM: S. V. GANGAPURWALA, Act.CJ.&
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 8, 2023

P.C.:

1. The petitioner participated in the tender process pursuant to the tender notice issued by the respondents for transportation of food-grains under public transportation system. The technical bid of the petitioner is rejected basically on the ground that the petitioner does not possess the capacity as required under the tender document.

2. As per clause 5.1 of the tender document, the petitioner shall have work experience of transportation equivalent to 33% metric ton of the food-grains transported for last three years in a district.

3. The learned counsel for the petitioner submits that the scheme was introduced only in the year 2021. As such, it would not be possible for any transporter to transport such a huge quantity of food-grains. The learned counsel further submits that because of Covid-19 also the transportation was affected. It is further submitted by the learned counsel that the petitioner had transported food-grains to the Solapur city. Because of the less card holders, the quantity of supply of food-grain is less. The same is marginally lower than the turnover required in the tender document. The learned counsel submits that the respondents have power to relax the tender conditions. The same has not been done. It is only to favour cartel, such condition has been introduced.

4. Mr. Kumbhakoni, learned senior counsel for the respondents submits that the petitioner, in para 13 of the writ petition, has admitted that it does not possess the necessary qualification as required under clause 5.1 of the tender document. The terms of the tender cannot be challenged nor relaxation can be claimed after participating in the tender process. Reliance is placed by Mr. Kumbhakoni on the judgment of the Division Bench of this Court, to which one of us (The Acting Chief Justice) was a party, in the case of **Datta s/o. Sakharam Kothule & Ors. vs. State of Maharashtra & Ors.**, reported in 2020(4) Mh. L. J. 710.

5. Admittedly, the petitioner had participated in the tender process. The petitioner does not possess the necessary experience of the transportation of the food-grain as required by clause 5.1 of the tender document. Relaxing any term of the tender would amount to rewriting the terms of the tender and the same is not permissible. The grievance of the petitioner could have been considered on its own merits if the terms of the tender would

have been challenged prior to the participation by the petitioner in the tender process.

6. In light of the above, no case for interference is made out. The writ petition is dismissed. No costs.

7. In light of the dismissal of the writ petition, the interim application also is disposed of.

8. The learned counsel for the petitioner prays for continuation of the interim order.

9. In view of the admitted fact in the petition itself that the petitioner did not possess the necessary qualification, we do not accede to the request for continuation of the interim order. The prayer is rejected.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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