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

WRIT PETITION NO. 4880 OF 2023

Om Industrial Engineering Services

..... Petitioner

Vs.

The Ulhasnagar Municipal Corporation
and Ors.

..... Respondents

Mr. Alankar Kirpekar a/w. Mr. Susmit S. Phatale for the Petitioner
Mr. B. V. Samant, AGP for the State
Mr. Vijay D. Patil for Respondent Nos.1 to 3

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

DATED : APRIL 19, 2023

P.C.

1. The Petitioner is challenging the tender notice dated 27th March 2023, more particularly clause 7(a)(i) of the E-Tender Notice dated 3rd January 2023.

2. Mr.Kirpekar, the learned Counsel for the Petitioner submits that clause 7(a)(i) is not in consonance with the Government Resolution dated 30th July 2020. The Respondent Municipal Corporation is insisting on registration with the Public Works Department (for short the **PWD**). A contractor filling in tender of more than Rs.1.5 Crores is not required to be registered with the PWD. The Corporation cannot impose a condition other than the one

prescribed under the Government Resolution dated 30th July 2020. The same would be beyond the authority of the Municipal Corporation. The Municipal Corporation is bound by the Government Resolution dated 30th July 2020. Even in the pre-bid meeting, it was suggested that the conditions of the Government Resolution dated 30th July 2020 would be required to be complied with. The Government Resolution dated 30th July 2020 is binding upon the Municipal Corporation. The Petitioner has registration with the PWD as Electrical Engineer. The Petitioner has got registration with the MJP as Mechanical and Electrical Engineer. As far as the Civil Engineering is concerned, the Petitioner has already forwarded all the documents necessary for enlisting with the PWD on 11th April 2023 and within 8 to 10 days, the Petitioner would be enlisted with the PWD. According to the learned Counsel for the Petitioner the condition of registration in Appropriate Class-A, as such, is erroneous and does not stand to reason. The said condition is irrational, arbitrary and it is beyond the executive instructions issued by the State of Maharashtra. The said executive instructions are binding on the Corporation.

3. We have also heard the learned Counsel for the Corporation. The learned Counsel for the Corporation submits that if the Petitioner was enlisted with the PWD so far as the Electrical /

Mechanical and Civil Class-IV is concerned on the date of filling in the tender, then the Petitioner's bid could have been considered on merits. Clause 7(a)(i) reads thus:

(i) Registration in Appropriate Class-A in (Electrical/ Mechanical) & Civil Class-IV above with MJP/ MCGB/ PWD/ CIDCO/ MIDC (Electrical)/Government / Semi Govt. / or any Semi Govt. organization.

4. It is not disputed that the Petitioner is not registered as Civil Class-IV Contractor with MJP/MCGB/PWD/CIDCO/MIDC and/or with the Government or some Government Organization.

5. The principal can lay down the terms and conditions. The terms and conditions are fixed by the experts. This Court can not sit in appeal over the terms and conditions provided by the employer. In tender matters, the employer is required to be given some leeway in finalizing the terms and conditions.

6. Government Resolution dated 30th July 2020 prescribes that if the work is of more than Rs.1.5 Crores, then it is not necessary that the tenderer should be registered with the PWD. However, it is prescribed that the tenderer should be enlisted with the PWD. Enlistment with PWD is mandatory irrespective of value of tender. In the present case, the Petitioner is not yet enlisted with the PWD. As contended by the learned Counsel for the Petitioner, the

documents are presented on 11th April 2023. The appointment has been given by the PWD and within 8 to 10 days, the Petitioner may be enlisted.

7. The eligibility to be considered is on the date of filling in the tender and not subsequent thereto. The technical bids are opened and are under scrutiny. Issuing any directions to the Corporation today would be interfering with the terms and conditions of the tender and/or rewriting the terms and conditions of the tender which is not possible for this Court.

8. In light of the above, no case for interference is made out. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)