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

WRIT PETITION NO. 5419 OF 2023

E. M. Services (I) Pvt. Ltd.

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

Mr. Nikhil Sakhardande, Senior Advocate i/by Mr. Hitesh Sangle a/w Mr. Hrishikesh Chitale for petitioner.
Mr. B. V. Samant, AGP for respondent no.1/State.
Ms. Anita Chaware for respondent nos.2 and 3.

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

DATE: APRIL 26, 2023

P.C.:

- 1.** The petitioner is challenging the tender.
- 2.** Mr. Sakhardande, learned senior advocate for the petitioner, submits that the first tender process was initiated in the month of December, 2021. The petitioner was successful bidder. Bid of the petitioner was accepted and on 7th July, 2022 a communication was made to the petitioner that the rates quoted by the petitioner are on the lower side and whether the petitioner will carry out the work at said rates. The petitioner on the same day replied to the respondents that it has manufactured and supplied Stage 3 to 16 Compressor Rotor Blades & Stage 1 to 16 Compressor Rotor Blades at GTPS-Uran in the recent past. That it would carry out the work within the stipulated time. That the

petitioner would abide by all the statutory rules and the work would be completed within specified time. The said tender was not processed further.

3. The second tender was issued without changing the terms and conditions of the first tender. In the second tender also the petitioner participated, however, the second tender has been cancelled and the third tender is issued. Though the third tender is issued, the first tender is still shown as subsisting on the website of the respondents.

4. The learned senior advocate submits that as the first bid of the petitioner has been accepted and the said tender process has proceeded further to the conclusion stage, the respondents have bound to allot the tender work to the petitioner. The learned senior advocate submits that the petitioner participated in the present tender process under protest.

5. The learned advocate for the respondents submits that the first tender would not be shown to have been withdrawn on the website due to technical glitches.

6. We have considered the submissions.

7. When the second tender notice was issued, the petitioner did not challenge the same on the ground that the first tender process is still continuing. The petitioner participated in the second tender process. The same was cancelled and the third tender process has been initiated. The petitioner has also filled in the tender in the third tender process.

8. We could have considered the submissions of the learned senior advocate for the petitioner had the petitioner come to the Court challenging the second tender issued by

the respondents when the first tender, according to the petitioner, was pending. However, the petitioner without any demur participated in the second tender process also. Now the petitioner cannot turn around and say that the first tender process is still underway. The terms and conditions are prerogative of the employer. The same terms and conditions are not shown to be arbitrary.

9. In light of that no relief can be granted to the petitioner. The writ petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)