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

WRIT PETITION NO. 5100 OF 2021

Mariwalla Bhatia Co-operative Consumer ... Petitioner
Society Ltd

vs.

The State of Maharashtra and Anr. ... Respondents

Mr. P.A. Pol i/b. Pol Legal Juris for the Petitioner.

Mr. A. A. Kumbhakoni, Senior Advocate a/w. Mr. P. P. Kakade,
GP, Mr. Akshay Shinde 'B' Panel counsel a/w. Mr M. M Pabale,
AGP for the State.

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

DATED : 3 FEBRUARY, 2023

P.C. :-

1. The petitioner had filled in the tender floated by the respondents for transportation of food grains. The petitioner is disqualified on the ground that the petitioner does not possess the necessary experience and capacity as required under clause 5.1 and 5.3 of the tender document.

2. Learned counsel for the petitioner strenuously contends that the petitioner had submitted the relevant documents such

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as Chartered Accountant's certificate to substantiate that the petitioner possesses the necessary capability and experience of transportation of food grains with the Government/Semi Government institutions. According to the learned counsel for the petitioner five certificates of the Chartered Accountant were submitted. However they are not referred to by the respondents. The learned counsel further submits that the certificate on record by the Chartered Accountant would unequivocally prove that the petitioner had transacted in the year 2018-19 and 2019-20 with the Government in transportation of the food grains. There was no reason to disbelieve the said certificate.

3. Learned counsel for the petitioner further submits that the bids were to be filled in before 2 pm on 14 June 2021 but illegally the time was extended by the respondents to favour some other persons. The same is illegal, they could not have done so. The bid of the petitioner is 20% lower than the base price whereas the person who is held to be the lowest bidder is 35% above the base price. There would be loss to the petitioner by illegally disqualifying the petitioner.

4. Mr. Kumbhakoni, learned Senior Advocate for the respondents submits that the clause 5.1 and 5.3. of the tender document very specifically prescribes the necessary experience. The petitioner does not possess the same. In one year, the bidder was required to transport about 1,07,110 M.T. of foodgrain with the Government/Semi Government authority in Mumbai Thane division. The same would come to Rs. 4,10,09,574/-. The certificate produced by the petitioner did not suggest that the petitioner had transported the same.

5. We have considered the submissions. Relevant clauses that is subject matter of consideration are 5.1, 5.2 and 5.3. The certificate produced by the petitioner is as under :

SUPPLY AND TRANSPORTATION OF RICE/FOOD GRAINS TURNOVER CERTIFICATE

This is to certify that, M/s. Mariwala Bhatia Consumers Co-operative Society Limited registered under The Maharashtra Co-operative Societies Act, 1960 vide Registration No. BOM/CON/131/YEAR 1947 DATED 06/11/1947 having registered address at T-130, Chembur Colony, Chembur, Mumbai-400 074. Details of the Supply and Transportation of Rice/Food Grains Turnover for last two years of the Society as under :

Sr. No.	Particulars	F.Y. 2018-19	F.Y. 2019-20
1	Supply and Transportation of Rice/Food Grains Turnover	3,16,89,636/-	3,34,63,889/-

Out of the total annual turnover for the above mentioned financial years, the following annual Turnover is Transportation of Rice/Food Grains is with government department.

Sr. No.	Particulars	F.Y. 2018-19	F.Y. 2019-20
1	Transportation of Rice/Food Grains with Government Department	1,20,12,283/-	1,16,90,637/-

F.Y. 2018-19 and 2019-20 Average Annual Turnover of Rs. 3,25,76,763/-

Above figures are given as per Audit Report available with the Society for the said years produced before us for verification. The Society is having good financial capacity to carry out the Supply and Transportation of Rice/Food Grains business.

This certificate is issued on their request to us.

The petitioner, as observed above was required to have minimum average turnover as mentioned in the district sheet from food grains transport business for Government/Semi Government for one year in successive preceding five years. The required transportation ought to be of Rs. 4,10,09,574/- in Thane Mumbai Division. The certificate produced by the petitioner does not substantiate the same. Moreover it also does not suggest the transportation of the food grain amounted to 1,07,110 M.T.

6. The corrigendum issued for extension of time for submission of bid was for all the bidders. In view of the fact that the petitioner could not demonstrate that it possesses the minimum average turnover as mentioned in the tender document, the case of the petitioner about the respondents having committed an error in disqualifying it fails.

7. Writ Petition as such is dismissed. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)