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

**WRIT PETITION NO. 8598 OF 2021
WITH
INTERIM APPLICATION NO. 30347 OF 2022**

M/s. Gupta Freight Carrier through	}	
Proprietor Vishal Pannalal Gupta	}	Petitioner
Versus		
The State of Maharashtra & Ors.	}	Respondents

Mr. S. M. Vaishnav for the petitioner.

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

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

DATE: FEBRUARY 10, 2023

P.C.:

1. The petitioner had participated in the tender floated by the respondents for transportation of food-grains under public distribution system. The petitioner filled the tender for Amravati district. The petitioner's tender is held non-responsive on the ground that the earlier contract entered upon between the petitioner and the Food Corporation of India (for short "FCI") was terminated and the earnest money was forfeited.

2. The learned counsel for the petitioner strenuously contends that the ground for rejection of the bid of the petitioner is totally untenable and does not stand to reason. According to the learned advocate, the petitioner complies with all the conditions. The FCI had cancelled the tender of the petitioner only on the ground that

the petitioner did not furnish the bank guarantee. The learned advocate submits that immediately upon grant of tender to the petitioner by the FCI, Covid-19 commenced. It was beyond the control of the petitioner that the bank guarantee could not be furnished and solely on the said ground the FCI terminated the agreement. According to the learned advocate, the same was challenged by the petitioner. Though the writ petition filed by the petitioner is dismissed, the petitioner had approached the Apex Court by filing the special leave petition (SLP) and the same is pending. The Apex Court, in the said SLP, has observed that the petitioner, if so desires, may be allowed to participate in the future tender process, subject to the final orders to be passed in the matter.

3. The learned advocate for the petitioner submits that the clause in the tender that a tenderer whose earnest money is forfeited would not be entitled to participate in the tender process is illegal and the same may not be considered. The learned advocate, to buttress his submissions, relies upon a judgment of the Division Bench of Delhi High Court in the case of **Atlanta Limited vs. Union of India**, reported in 2018 SCC OnLine 8269. According to the learned advocate, the Delhi High Court in the said case has specifically observed that similar clause stipulated by the National Highways Authority of India (NHAI) cannot debar or disqualify the petitioner therein from participating in the other bids taken out by NHAI. According to the learned advocate, opportunity deserves to be given to the petitioner to participate in the tender process.

4. The learned advocate for the petitioner lastly submitted that clause 5.15 of the Government Resolution dated 15th January 2021 prescribes that the person whose contract is terminated for lack of diligent work is only disqualified.

5. Mr. Kumbhakoni, learned senior advocate for the respondents submits that the tender conditions are specific and patently clear. The disqualifying condition clause 8.3 and sub-clauses (b) and (c) thereof disentitle the petitioner from participating in the tender process. The learned senior advocate relies upon the judgment of the Division Bench of this Court in Writ Petition (St.) No. 4046 of 2020 (**BVG India Ltd. vs. the State of Maharashtra & Ors.**) decided on 19th March 2021.

6. We have considered the submissions canvassed by the parties. The only ground for disqualification of the petitioner from participation in the tender process is that the earlier contract entered into between the petitioner and the FCI, pursuant to the tender issued by the FCI, is terminated. The security deposit is forfeited. Clause 8.3 of the tender conditions reads thus: -

8.3. Disqualification Condition.

- a) Tenderers who have been blacklisted or otherwise debarred by the Food, Civil Supplies and Consumer Protection Department and its district offices or any department of Central or State Government will be ineligible during the period of such black listing or for a period of 5 years from the date of blacklisting/debarment, whichever is earlier.
- b) Any Tenderer whose contract with the Food, Civil Supplies and Consumer Protection department or its district offices, or any department of Central or State Government has been terminated before the expiry of the contract period at any point of time during last five years, will be ineligible.
- c) Tenderer whose Earnest Money Deposit and/or Security Deposit has been forfeited by Food, Civil Supplies and Consumer Protection department or its district offices, MARKFED, MSCTDC or any department of Central or State Government during the last five years, will be ineligible.
- d) If the proprietor/any of the partners of the Tenderer firm/any of the Director of the Tenderer company have been, at any time, convicted by a court of an offence and sentenced to imprisonment for a period of three years or more, such Tenderer will be ineligible.

- e) While considering ineligibility arising out of any of the above clauses, incurring of any such disqualification in any capacity whatsoever (even as a proprietor, partner I another firm, or as director of a company etc.) will render the Tenderer disqualified.

7. In the present writ petition, it will not be possible to look into the reasons for termination of the contract in the earlier proceedings. It is not a case that the present tender is issued by the same tenderer. The present tender is by a different body. Clause 8.3 as reproduced supra, more particularly sub-clause (c) thereof specifically states that the tenderer, whose earnest money deposit and/or security deposit has been forfeited by Food, Civil Supplies and Consumer Protection department or its district offices, MARDFED, MSCTDC or any department of Central or State Government during the last five years, will be ineligible.

8. The petitioner has not challenged the said term and condition of the tender. Without any demurer, the petitioner participated in the tender process. Now, it would be too late in the day to consider the validity of the said term and condition. The term as it stands pertaining to the disqualification of the petitioner disentitles the petitioner from participating in the tender process. The factual matrix is not disputed. The earnest money/security deposit of the petitioner has been forfeited and the contract is terminated.

9. Insofar as the submission of the learned advocate of the petitioner with regard to clause 5.15 of the Government Resolution dated 15th January 2021 is concerned, reliance of the learned advocate on the said clause may not be sufficient to hold the petitioner eligible in view of the disqualification conditions mentioned in clause 8.3 of the tender document and as it stands.

10. In light of the above, no relief can be granted to the petitioner. The writ petition is dismissed. No costs.

11. In light of the dismissal of the writ petition, the interim application stands disposed of.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)