

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

WRIT PETITION NO.15345 OF 2023

Sagar Lookouts

Through its Power of Attorney Holder

Mr. Mohan Shambhoo Mungekar : Petitioner.

Vs.

The State of Maharashtra and ors. : Respondents.

Mr. Mayur Khandeparkar i/by Mr. Siddharth Mehta for the
Petitioner.

Mr. P. P. Kakade, GP a/w Ms. R. a. Salunkhe, AGP for Respondent
No.1/State.

Mr. Saket Mone a/w Ms. Anchita Nair and Mr. Devansh Shah i/by
Vidhii Partners for Respondent Nos.2 to 4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 08th DECEMBER, 2023

P.C. :

1 It is the grievance of the Petitioner that on account of
technical glitches on the server/portal of Respondent No. 3 the
Petitioner was unable to upload its financial bid in respect of the
tender floated by Respondent No. 2 for Development and
Beautification of Central Maidan of Road Along Metro Line 9
(Dahisar - East to Mira Bhayander and as a consequence thereof,

the Petitioner has been excluded from the bidding/tender process. It is equally the Petitioner's grievance that the representations made by the Petitioner to Respondent Nos. 2 and 4 *inter alia* seeking an extension of time for the Petitioner to submit its financial bid have gone unanswered. It is thus that the Petitioner has approached this Hon'ble Court seeking the following reliefs, viz.

- "(a) Issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records in relation to the representation/mail/letter made by the Petitioner to the Respondents on 04.12.2023 which was not addressed by the Respondents for the submission of the said Tender No.: MMRDA/Metro-PIU/2023-24/CA-198 dated 24-11-2023 for Development and Beautification of Central Median of Road Along Metro Line 9 (Dahisar (E) to Mira Bhayander) issued by Respondent No.2 after going through the legality, validity and propriety thereof issue such orders and directions quashing and setting aside the Tender Proceedings;*
- (b) In the alternative to Clause (a) above, Issue a Writ of Mandamus or a Writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to consider the letter/representation/mail addressed by the Petitioner to the Respondent Nos. 2 and 4 on 04.12.2023 to allow the Petitioner to submit the financial bid of the Petitioner vide the Tender No. : MMRDA/Metro-PIU/2023-24/CA-198 dated 24.11.2023 for Development and Beautification of Central Median of Road Along Metro Line 9 (Dahisar (E) to Mira Bhayander) issued by Respondent No.2;*

(c) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to allow the Petitioner to submit its financial bid as eligible and open vide Tender No. : MMRDA/Metro-PIU/2023-24/CA-198 dated 24.11.2023 for Development and Beautification of Central Median of Road Along Metro Line 9 (Dahisar (E) to Mira Bhayander) issued by Respondent No.2."

2 Mr. Khandeparkar learned counsel appearing on behalf of the Petitioner, at the outset invited our attention to the e-Tender notice dated 24th November 2023 and pointed out in terms thereof that the Petitioner had duly deposited the earnest money of Rs.3,13,000/- along with Tender Fee of Rs.2,360/-with Respondent No.2. He then from the tender document, pointed out that, the time for submission of bids was 11 a.m. on the 4th of December 2023. Mr. Khandeparkar submitted that though the Petitioner was able to successfully upload its technical bid, the financial bid could not be uploaded despite the Petitioner making four attempts to do so. He submitted that the same would uploaded to the extent of about 99% and then would not proceed. He submitted that the same was on account of technical difficulties/glitches on the server/portal of Respondent

No. 3. Mr. Khandeparkar thus submitted that as a consequence of the Petitioner's inability to upload the financial bid successfully by 11.00 a.m., the Petitioner was ousted from the tender process.

3 Mr. Khandeparkar submitted that it was in these circumstances that the Petitioner on the very same day made representations to Respondent Nos. 2 and 4 *inter alia* seeking an extension of time to submit the Petitioner's financial bid. He pointed out that the Petitioner's representations were not considered or even responded to. Mr. Khandeparkar submitted that it was for no fault of the Petitioner, that the Petitioner had been excluded from the tender process. He then submitted that no prejudice whatsoever would be caused to any of the parties, if the Petitioner's financial bid was accepted and considered on merits, since the benefit of the same (assuming the Petitioner's bid was the highest) would enure to the public exchequer.

4 Mr. Khandeparkar then submitted that another factor

which made clear the *malafides* on the part of Respondent No. 2 was the fact that the work at the site had started on the very next day after the date of submission of bids i.e., 5th December 2023 even before any work order was issued. He therefore submitted that clearly exclusion of the Petitioner was only to favour one of the participating bidders. He thus prayed that the present Writ Petition be allowed, and the Petitioner's financial bid be opened and considered along with the other bids received.

5 *Per contra*, Mr. Mone, learned counsel appearing on behalf of Respondent Nos. 2 to 4, submitted that the present Petition was totally misconceived and lacked any merit in its entirety. He submitted that there was absolutely no technical glitch on the e-tendering portal of Respondent No.3. In support of his contention, he tendered a chart which showed that during the same time at which the Petitioner alleged that the server/portal of Respondent No.3 was facing severe technical difficulties, three other bidders namely, M B Brothers, Oriental Integrated Facility Management Pvt. Ltd. and Pinakee Engineers

and Developers had all successfully uploaded their bids/documents. He then placed reliance upon a copy of an hour wise report of the e-procurement system of the Government of Maharashtra for 4th December 2023 i.e., the date for submission of bids which gave an hour wise break up of number of bids placed and documents uploaded. He pointed out that between 10.00 a.m. and 10.59 a.m., i.e. the same time the Petitioner alleged that the server/portal of Respondent No. 3 was facing severe technical difficulties, a total number of 104 bids were placed and 402 documents were uploaded. He thus submitted that the Petitioner's contention that there were technical glitches on the server/portal of Respondent No.3 was a plainly false contention.

6 Mr. Mone then invited our attention to the tender notice and guidelines for submission of tender and pointed out that clause 20 thereof specifically provided that in case of any queries, bidders may contact Respondent No.2's e-tendering service desk on any day between 10 a.m. and 5:30 p.m. He

submitted that despite this, the Petitioner did not at any time prior to 11 a.m. on 4th December, 2023, i.e. the cutoff date and time for submission of bids/uploading of documents, contact Respondent No.2's e-tendering service desk for registering any grievance qua the alleged technical difficulties faced. He pointed out that both the representations made by the Petitioner were sent well after 11.00 a.m. Basis this, he submitted that the Petitioner had infact not availed of the remedy/procedure prescribed under the terms and conditions of tender for redressal of any grievance that the Petitioner might have had in the tender/bidding process.

7 Mr. Mone then placed reliance upon a judgment of the Hon'ble Supreme Court in the case of ***Maharashtra Housing Development Authority Vs. Shapoorji Pallonji and Company Private Limited and others***¹ to submit that the Petitioner having failed to take any timely response/action to redress the purported grievance faced would itself indicate the fact that the Petitioner's bid was not valid. He pointed out that

1 (2018) 3 SCC 13

the Hon'ble Supreme Court had, in virtually identical circumstances, held that granting any opportunity to a bidder in such a case to submit its bid belatedly was impermissible. Basis this, Mr. Mone submitted that the present Petition was one which deserved to be dismissed.

8 We have heard the learned counsel for both sides and we are satisfied that the present Writ Petition deserves to be dismissed. We must note that other than a screen shot of Petitioner's bid being uploaded to 99%, and the pleading that the server/portal of Respondent No.3 was facing technical glitches, there is nothing to indicate or even remotely suggest that the failure to complete the uploading of the Petitioner's financial bid was on account of any severe technical glitches on the server/portal of Respondent No.3. *Per contra* Learned counsel for Respondent Nos. 2 to 4 has produced before us material including specific data, which in our view is incontrovertible, to show that during the time at which the Petitioner has alleged that the server/portal of Respondent No.3

was facing severe technical difficulties, other bidders had in fact successfully uploaded their respective bids. This could never have been done, if in fact there were severe technical glitches on the portal/server of Respondent No.3 as alleged by the Petitioner.

9 We must also note that despite the fact that the Tender Notice and Guidelines for submission of Tender specifically provided for a mechanism for the bidders who faced any difficulty to approach the e-Tendering Service Desk, the Petitioner admittedly did not do so at any point of time prior to the date and closing time of submission of bids.

10 All these factors to our mind indicate that the bid submitted by the Petitioner was not a valid bid and by now permitting the Petitioner to submit its financial bid, the same would virtually confer upon the Petitioner a second opportunity to do so. It is precisely this which cannot be countenanced as has been held by the Hon'ble Supreme Court in the case of ***Maharashtra Housing Development Authority Vs.***

Shapoorji Pallonji and Company Private Limited and others. (Supra)

11 For the above reasons, we find no merit in the present Writ Petition and accordingly the same is dismissed.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)