

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1577/2023

(M/S KOHLI ROADLINES, NAGPUR **VERSUS** MAHARASHTRA STATE POWER GENERATION COMPANY
LIMITED, MUMBAI)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.P. Dharmadhikari, Senior Advocate with Ms A.N. Kawale, counsel for the petitioner.

Shri M.P. Khajanchi, counsel for the respondent.

Shri A.A. Naik, counsel for the applicant in C.A.W. No. 846/2023.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : MARCH 16, 2023.

The challenge raised in this writ petition is to the tender floated by the respondent in the matter of transportation of Raw Coal transportation against Road-cum-Rail (RCR) Allocation from Kusmunda/Gevra/Dipka mines of South East Coalfield Limited (SECL) to the Thermal Power Stations of the respondent.

2. A preliminary objection is raised by the learned counsel for the respondent that this Court lacks territorial jurisdiction to entertain the writ petition since no part of the cause of action has arisen within the territorial limits of the Nagpur Bench of this Court. Accordingly, the learned counsel for the parties have been heard on the aforesaid preliminary objection.

3. A brief reference to the E-Tender document is necessary. The aforesaid E-Tender notice is dated 11.01.2023 and the work proposed is Raw Coal transportation against Road-cum-Rail (RCR) Allocation from Kusmunda/Gevra/Dipka mines of South East Coalfield Limited to the Thermal Power Stations of the respondent. The registration, sale of tender document as well as submission of the same is required to be done online and the pre-bid meeting is to be held at the Office of the respondent at Prakashgarh, Bandra (East), Mumbai. In effect, the E-Tender document has been published from the Head Office of the respondent at Mumbai and the submission of the bids is also to be done online at the said Head Office.

4. Shri M.P. Khajanchi, learned counsel for the respondent in support of the preliminary objection submits that the entire tender process is to be conducted online and consideration of all the bids received is to be undertaken at the Head Office at Mumbai. The evaluation as well as the process of reverse bidding which is also to be conducted online is through the Head Office at Mumbai. The mere reason that transportation of coal to various Thermal Power Stations including those situated within the territorial jurisdiction of this Bench cannot result in giving rise to any cause of action to the petitioner to challenge the tender document on the grounds pleaded in the writ petition. Mere fact that the Office of the petitioner is situated at Nagpur is not sufficient to enable the writ petition to be filed at Nagpur for being entertained on merits. In support of his submissions the learned counsel has relied upon the judgment of this Court in **Writ Petition No. 5444 of 2021** [*Balaji Ventures Pvt. Ltd. Versus Maharashtra State Power Generation Company Ltd. & Another*] decided on 24.01.2022 as well as the judgment of the Hon'ble Supreme Court in **Petition(s) for Special Leave to Appeal (C) Nos.1616 of 2022 and 1673 of 2022** that were filed for challenging the judgment of this Court dated 24.01.2022. Mere submission of online tender documents from Nagpur would thus not confer any territorial jurisdiction for the petitioner to invoke the writ jurisdiction at this Bench. It is thus submitted that since no part of cause of action arises at Nagpur, the writ petition need not deserve to be entertained on merits at this Bench.

5. Shri S.P. Dharmadhikari, learned Senior Advocate for the petitioner opposed the aforesaid submissions and submitted that even if a part of cause of action is shown to have arisen within the territorial limits of the Nagpur Bench, the writ petition ought to be entertained on merits. Reference was made to various clauses of the E-Tender document and especially Clauses 1.1, 1.2, 1.14, 1.17, 1.27, 1.35 as well as Schedule-IV of the bid document to urge that notwithstanding the fact that the bids were to be submitted online, the petitioner had downloaded the E-Tender document at Nagpur and it had submitted the same from Nagpur resulting in part of cause of action arising at Nagpur. Merely

because the bid document was to be submitted online to the Head Office of the respondent at Mumbai would not result in ousting the territorial jurisdiction of this Bench especially in the light of the fact that the transportation of Raw Coal was to be made to various Thermal Power Stations of the respondent of which about four Thermal Power Stations are situated within the territorial limits of this Bench. It was further submitted that the petitioner had earlier approached this Court in **Writ Petition No. 1134 of 2023** [*M/s Kohli Roadlines, Nagpur Versus Maharashtra State Power Generation Company Ltd. Mumbai*] since the petitioner was precluded from uploading the E-Tender document prior to the time fixed for the same. This Court had entertained the said writ petition on 20.02.2023 and had passed an interim order permitting the petitioner to submit its E-Tender document offline. The learned Senior Advocate placed reliance on the decisions in *Shanti Devi Alias Shanti Mishra Versus Union of India & Others* [(2020) 10 SCC 766] and *Alchemist Ltd. & Another Versus State Bank of Sikkim & Others* [(2007) 11 SCC 335] in that regard. He also attempted to distinguish the judgment of this Court in *Balaji Ventures Pvt. Ltd.* (supra) to urge that the legal issues now raised were not raised when the aforesaid writ petition was heard. It was thus submitted that since a part of the cause of action had arisen within the territorial jurisdiction of the Nagpur Bench, the writ petition was liable to be entertained on merits.

6. Shri Akshay Naik, learned counsel for the applicant in Civil Application (W) No. 846 of 2023 that has been filed for intervening in the present proceedings supported the preliminary objection raised by the respondent and invited attention to the judgment of the Hon'ble Supreme Court in *The State of Goa Versus Summit Online Trade Solutions (P) Ltd. & Others* **Civil Appeal No. 1700 of 2023 with other connected Civil Appeals** decided on 14.03.2023. It was urged that in absence of any pleadings in the writ petition to demonstrate the manner in which part of cause of action had arisen, there was no basis to urge that part of cause of action arose within the territorial limits of this Bench.

7. Having heard the learned counsel for the parties on the preliminary objection and having given due consideration to the respective submissions, we are of the considered view that since no part of cause of action arises within the territorial limits of the Nagpur Bench of this Court, the writ petition is not liable to be entertained on merits.

Firstly, it is to be noted that there are no pleadings whatsoever in the entire writ petition to indicate the basis for the petitioner to invoke the territorial jurisdiction of this Court for seeking the reliefs sought in the writ petition. The grounds raised in the writ petition relate to the alleged arbitrary manner in which the respondent conducted the tender process especially by extending the time for submitting the bids from 03.03.2023 to 09.03.2023 in a manner contrary to the terms of the notice inviting bids. The writ petition is totally silent on the aspect of even a part of cause of action arising within the territorial limits of the Nagpur Bench. The learned counsel for the applicant has rightly invited our attention to the recent decision of the Hon'ble Supreme Court in *The State of Goa* (supra) wherein the aspect of importance of pleading facts to indicate the manner in which cause of action arises has been highlighted. In absence of any pleadings whatsoever in that regard, it would not be permissible for this Court to proceed merely on the assumption that since the petitioner has its Office at Nagpur, the same is sufficient to invoke the jurisdiction on the ground that a part of cause of action arose at Nagpur. Absence of these basic pleadings precludes the petitioner from seeking consideration of its contention that a part of cause of action has arisen at Nagpur.

8. A perusal of the E-Tender document indicates that it has been published by the respondent through its Head Office at Mumbai. All steps commencing from registration of the prospective bidders, sale of the tender document, holding of the pre-bid meeting followed by the entire process till opening of the financial bids is to be conducted at the Head Office at Mumbai. It is true that certain acts such as submission of E-Tender document and payment of amount in that regard are permitted to be done online. Merely because the petitioner who has its Office at Nagpur has downloaded the E-Tender document at Nagpur and

thereafter sought to upload the E-Tender document from Nagpur, the same would not be sufficient to confer territorial jurisdiction at Nagpur in absence of any part of a cause of action having arisen here. In fact, the petitioner could not upload the entire tender document and hence had filed Writ Petition No. 1134 of 2023 and by the interim order dated 20.02.2023 it was permitted to submit the bid documents offline. It is pleaded in paragraph 10 of the writ petition that pursuant thereto, the petitioner submitted its bid offline at the Head Office of the respondent at Mumbai. Thus in effect even the petitioner's bid documents were submitted at Mumbai which indicates that no event has occurred at Nagpur. Further, the petitioner is aggrieved by the extension of time for online submission of bids which is alleged to have been done to favour other bidders. The extension of time from 03.03.2023 to 09.03.2023 has occurred at the Head Office at Mumbai. Even the fact that the transportation of Raw Coal at some Thermal Power Stations situated within the territorial jurisdiction of this Bench is not a relevant factor at this pre-bid stage. The issue in question is of the extension of time for submission of bids which the petitioner alleges is contrary to the conditions of the notice inviting tender. As observed by this Court in *Balaji Ventures Pvt. Ltd.* (supra), it is only that fact which has a nexus or relevance with the *lis* that is involved that gives rise to a cause of action which would be relevant as held in *Union of India Versus Adani Exports Ltd.* [(2002) 1 SCC 567]. We therefore find on perusing the writ petition and reading the entire tender document that no part of cause of action arises within the territorial limits of Nagpur Bench for the writ petition to be entertained in the light of the reliefs sought therein.

9. Even if the contention of the petitioner that part of cause of action has arisen within the territorial limits of this Court is accepted, on the doctrine of '*Forum Conveniens*', we are not inclined to entertain the writ petition. The fact that the evaluation of the tender document is to take place at Mumbai from where the tender notice has been issued is sufficient to hold that it would be more convenient if the writ petition is entertained at the Principal Seat within whose territorial jurisdiction the Head Office of the respondent is situated.

10. For aforesaid reasons, we decline to entertain the writ petition for absence of cause of action or even part thereof arising at the Nagpur Bench of the High Court. The writ petition is thus not entertained on merits and it is disposed of for aforesaid reasons. Needless to state that the petitioner is free to approach the Court having territorial jurisdiction to raise the grievances as raised in this writ petition in accordance with law. The points raised in the writ petition are kept open. Order accordingly. No costs.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

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