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

WRIT PETITION NO.6822 OF 2023

(Shakeel Ahmed Shaikh Maheboob and others vs. Union of India and others)

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

Shri A.R. Deshpande, Advocate for petitioners.

Shri N.S. Deshpande, Deputy Solicitor General of India for
respondent no.1.

Shri M.P. Khajanchi, Advocate for respondent nos.2 and 3.

Shri M.M. Agnihotri, Advocate for respondent no.4.

Shri M.I. Dhattrak, Advocate for respondent nos.5 to 9.

Shri A.S. Fulzele, Additional Government Pleader for
respondent no.10.

Shri Firdos Mirza, Advocate for respondent no.12.

**CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.**

DATED : DECEMBER 7, 2023

ORAL ORDER (PER NITIN W. SAMBRE, J.) :

Heard Shri Deshpande, learned Counsel for
petitioners, Shri Deshpande, learned Deputy Solicitor General
of India for respondent no.1, Shri Khajanchi, learned Counsel
for respondent nos.2 and 3, Shri Agnihotri, learned Counsel
for respondent no.4, Shri Dhattrak, learned Counsel for
respondent nos.5 to 9, Shri Fulzele, learned Additional
Government Pleader for respondent no.10 and Shri Firdos
Mirza, learned Counsel for respondent no.12.

2) The petitioners have questioned the e-tender
notice dated 10/5/2023 issued by the respondent no.3 for
disposal of pond ash and the entire consequential action
thereto, such as issuance of work order/order of lifting of

pond ash. The petitioners have also prayed for issuance of directions to the respondent no.3 Company to follow the instructions issued by the Ministry of Power, Government of India in its notification dated 31/12/2021 and Advisory dated 22/2/2022.

3) Shri Deshpande, learned Counsel for the petitioners, submits that the petitioners are the brick manufacturers and as such, can be termed as end users of the pond ash or the actual consumers of the same. According to him, the Central Government in its Advisory dated 22/2/2022 in categorical terms, particularly under Clause 5.1 has expressly provided that the power plants, which are operated by the respondent no.3 in this case, shall provide ash to user agencies as stipulated in MOEF&CC notification dated 31/12/2021 through a transparent bidding process only. According to the learned Counsel, the tender process taken out by the respondent no.3 is thus contrary to the aforesaid condition as the transporters are permitted to participate in the auction, who are successful bidders and as such, the said tender condition goes contrary to the aforesaid notification. He would specifically harp upon the very word used in the aforesaid condition “user agencies”. The petitioners are thus questioning the e-tender process by stating that the said tender condition is illegal and contrary to the Government notification.

4) The learned Counsel for the respondents support the e-auction process and e-tender floated by the respondent no.3.

5) We have considered the aforesaid submissions. The issue about legal right of the petitioners to question the tender condition is well settled in the judgments of the Apex Court in Agmatel India Private Limited vs. Resoursys Telecom and others {(2022) 5 SCC 362}, Airport Authority of India vs. Centre for Aviation Policy, Safety & Research (CAPSR) & others (2022 SCC OnLine SC 1334), N.G. Projects Ltd. vs. Vinod Kumar Jain and others {(2022) 6 SCC 127}, Waterfront Construction Private Limited vs. State of Maharashtra (2023 SCC OnLine Bom 2032) and Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another {(2016) 16 SCC 818}.

6) In the matter of Airport Authority of India vs. Centre for Aviation Policy, Safety & Research (CAPSR) & others (2022 SCC OnLine SC 1334), while relying on the judgment of the Apex Court in the matter of Maa Binda Express Carrier vs. North-East Frontier Railway (2014) 3 SCC 760, the Apex Court has held that the terms subject to which the tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. Such is not the case of the petitioners.

7) The fact remains that the petitioners are neither the tenderers nor they have claimed that they have attempted to submit the tenders, but were not permitted to do so. Their contention is that they are the end users and that being so, the successful tenderers are disqualified being not end users

of the pond ash.

8) In view of above, the interpretation of terms of tender, which is sought to be canvassed by the petitioners, cannot be done at the behest of the petitioners.

9) The fact remains that the tender conditions are not open for challenge at the behest of the parties like petitioners, who have never participated in the tender process. Rather it is the case of the petitioners that they are the end users, as such are entitled to pond ash and that being so, the tender should have been restricted only to the extent of the petitioners, who are ultimate beneficiaries and the entire action of the respondent no.3 is contrary to the very scheme as reflected in Government of India's Advisory dated 22/2/2022. The respondent no.3 is required to provide ash to the user agencies as stipulated in the notification dated 31/12/2021 through a transparent bidding process only.

10) The fact remains that the respondent no.3 has issued tender notice and the entire process is conducted in a transparent manner. The petitioners have failed to demonstrate as to mode and manner in which bidding process goes contrary to the notification dated 31/12/2021 issued by the Ministry of the Environment, Forest and Climate Change.

11) Apart from above, the fact remains that the petitioners have also failed to demonstrate that the respondent successful bidders cannot be termed as user agencies. The tender conditions or the aforesaid notifications

do not speak of brick manufacturers being the end users and are entitled to pond ash as of right.

12) The claim of the petitioners is based on the contractual obligation, which petitioners claim to be spelling out from the policy of the Government. That being so, we refrain ourselves from causing interference at the behest of the petitioners. The petition is devoid of merits and hence, stands dismissed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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