



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2311 OF 2024

White Horse Parcels Pvt. Ltd.,
Tapadiya Terraces, Adalat Road,
Aurangabad, Through its Director,
Ishwarlal Nandlal Chichani,
Age-57 years, Occu:Director,
White Horse Parcels Pvt. Ltd.,
R/o-Flat No.5, Alap Apartment,
Jyotinagar, New Dashmeshwer Mandir,
Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary for
Motor Transport Department,
Mantralaya, Mumbai,
- 2) Maharashtra State Road Transport
Corporation, Maharashtra Vahtuk Bhavan,
Dr. Anandrao Nayar Marg, Mumbai Central,
Mumbai, Through it Managing Director,
- 3) General Manager (Planning & Marketing),
Central Office, Maharashtra State Road
Transport Corporation, Vahtuk Bhavan,
Dr. Anandrao Nayar Marg, Mumbai Central,
Mumbai.

...RESPONDENTS

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Mr. P.V. Barde Advocate for Petitioner.
Ms. M.N. Ghanekar, A.G.P. for Respondent No.1.
Mr. D.S. Bagul Advocate for Respondent Nos. 2 and 3.

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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 3rd APRIL, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. The petitioner challenges the tender condition No. a) 2.11.1 in respect of earnest money deposit, b) 2.27 in respect of security deposit and c) 2.22 in respect of turnover, to the tender notice dated 1st January 2024 with corrigendum and further prays to correct the earnest deposit not more than Rupees Fifty Lacks, security deposit not more than 10% i.e. four months guaranteed revenue fees and Six Crore of annual turnover for last three years.

2. Respondent No.2 came up with tender notice on 1st January 2024 thereby calling offers for appointment of agency for transportation of parcels, specific allied services and operation of courier services through Maharashtra State Road Transport Corporation (for short "MSRTC") buses. The tender was for three years having an option of extension of one year. The earnest money deposit amount was quoted as Rupees One Crore, security deposit in tender was quoted as 25% and for

qualification to participate in the tender it is said that the turnover for last three consecutive years must be more than Rupees Sixteen Crores annually. The petitioner says that he has participated in pre-bid meeting held on 10th January 2024 and raised specific grievance in respect of those conditions. According to the petitioner, the said conditions are to favour somebody, as there could have been hardly such turnover in the business in view of Covid Pandemic, in last three consecutive years. Thereafter by corrigendum dated 9th February 2024 published by respondent Nos. 2 and 3 on 16th February 2024, the conditions were altered and it is stated that the earnest money deposit of Rupees Fifty Lakhs to be paid through online gateway and Rupees Fifty Lakhs to be paid as bank guarantee. Security deposit is reduced from 25% (6+3 months) to 17% (3+3 months) guaranteed revenue fee. However, the turnover of Rupees Sixteen Crores was maintained as it is.

3. Respondent Nos. 2 and 3 are relying on the affidavit-in-reply of Jayash Eknath Bamane, General Manager (Planning and Marketing), Central Office, Maharashtra State Road Transport Corporation, Wahatuk Bhavan, Mumbai, wherein it has been

stated that the tender has been floated with an intention to carry out the parcel service activity in a smooth manner. In view of the corrigendum, the word 'courier services' has now been deleted and the tender is restricted to transportation of parcel through MSRTC buses. The petitioner has not set out any *mala fides* at the instance of the Corporation while settling the terms and conditions. The judicial review in respect of tender conditions is not permissible. Respondent No.2 is at liberty to set out those terms and conditions.

4. Heard learned Advocate Mr. Barde for the petitioner, learned AGP Ms. Ghanekar for respondent No.1 and learned Advocate Mr. Bagul for respondent Nos. 2 and 3. In order to cut short, we would like to say that the learned Advocates appearing on behalf of the respective parties have argued in support of their respective contentions.

5. We are taking note of the decision in *N.J. Projects Ltd. vs. Vinod Kumar Jain and others*, (2022) 6 SCC 127, *M/s. Agmatel India Pvt. Ltd. vs. M/s. Resoursys Telecom and others*, 2022 LiveLaw (SC) 105, *Tata Motors Limited vs. The Brihan Mumbai*

Electric Supply and Transport Undertaking (BEST) and others, 2023 LiveLaw (SC) 467, wherein consistently it has been held by the Hon'ble Apex Court that the interpretation of the terms and conditions of the contract should be left to the author of the tender document. Judicial review is permissible only if the questioned decision fails on the salutary tests of irrationality or unreasonableness or bias or procedural impropriety. Therefore, the question herein this case is, whether this Court can change those terms and conditions of the tender document which the petitioner wants to change.

6. Learned Advocate for the petitioner is relying on the three Judge Bench decision of the Hon'ble Apex Court in *Ramana Dayaram Shetty vs. International Airport Authority of India, 1979 (3) SCC 489*, wherein it was held that respondent No.1 i.e. International Airport Authority of India was not entitled to act arbitrarily in accepting the tender of respondent No.4, but was bound to conform to the standard or norm laid down in paragraph No.1 of the notice inviting tenders which required that only a person running a registered second class hotel or restaurant and having at least five years experience as such

should be eligible to tender. The interference was said to be justified when the tenderer departs and sets out some unreasonable conditions.

7. Here, the petitioner has not demonstrated that there is any *mala fide* intention or respondent Nos. 2 and 3 want to favour some person. Now, if some conditions were not possible to fulfill or favourable to the petitioner, that does not mean that nobody else would come forward who can fulfill those conditions. Learned Advocate for the petitioner was mainly harping upon turn over condition stating that in view of transportation or parcel activity and as there was Covid-19 Pandemic situation and everything was standstill, many companies or individuals could not have done similar activities and therefore, it was not justifiable for respondent Nos.2 and 3 to expect that the bidders fulfilling these three conditions would be available. However, learned Advocate for respondent Nos. 2 and 3, on instructions, submitted that as on today in all four bidders have taken part in the tender process. The tenders are yet to be opened. Therefore, he submits that there are persons / agencies, who are fulfilling the criteria.

8. Unless we have data before us, we cannot appreciate the submissions on behalf of the petitioner. No doubt the Covid Pandemic situation has hit all the persons / agencies across the Country and the business had become standstill during that period. But, still it cannot be said that there would not be any agency who can fulfill the above terms. Merely because those conditions are not suitable to the petitioner, it cannot be said that those conditions are arbitrary.

9. In view of the judicial pronouncements, referred above, we do not find that case is made out for interference under Article 226 of the Constitution of India and the Writ Petition deserves to be dismissed.

10. The Writ Petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE