



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3153 OF 2024

Bhagyadeep Industrial Co-operative
Society Ltd., Having its registered
Office address at N-11, F 21/7, Hudco,
Aurangabad-431 003,
Through its Member,
Sachin S/o Sadashiv Birare,
Age-38 years, Occu:Service,
R/o-Navjivan Colony, Hudco,
Chh. Sambhajinagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Election Commission,
Mantralaya, Mumbai-32,
- 2) The Collector and District Election Officer,
Office of the District Collector,
Election Branch, Jalgaon,
- 3) Mangal Mandap decorators,
Through its Proprietor,
Kailash Diama,
Age-40 years, Occu:Business,
R/o-Station Road, Chalisgaon,
Dist-Jalgaon.

...RESPONDENTS

...
Mr. P.R Katneshwarkar Advocate for Petitioner.
Mr. A.M. Phule, A.G.P. for Respondent Nos. 1 and 2.
Mr. S.S. Thombre Advocate for Respondent No.3.

...

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

DATE OF RESERVING JUDGMENT : 1st APRIL 2024

DATE OF PRONOUNCING JUDGMENT : 10th MAY 2024

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

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.
2. The petitioner challenges rejection order dated 15th March 2024 intimated by respondent No.2 to him through E-mail regarding rejection of the tender proposal presented by the petitioner in tender notice No. NIVAD-1/KAVI/254/2024, dated 15th February 2024. The petitioner also prays to direct respondent No.2 to hold the petitioner as qualified bidder.
3. The facts which are not in dispute are that respondent No.2 had floated tender No. NIVAD-1/KAVI/254/2024 for supply of various services like erecting pendal, giving furniture and other articles on rent for the upcoming Lok Sabha and Vidhan Sabha General Elections. The petitioner has submitted online bid on 5th March 2024 and had also paid an amount of Rs.2,40,000/-

towards the tender fee. Respondent No.2, upon verification of documents of four participants, disqualified the petitioner by stating that the petitioner is not having experience of five years in two entire Districts at a time as stated in term /condition No.7 of the E-tender, as regards the Envelope No.1 (Technical Envelope) is concerned. It is further an admitted position that in the said tender, respondent No.3 has been issued work order.

4. The petitioner has come with the case that in fact the petitioner completed the work in Pune District as well as Thane District at the same time in last five years, which was in respect of Lok Sabha elections. The petitioner had produced certificates of competent authority to that extent. The petitioner had completed the work in respect of entire Pune District and had completed the work of part of Thane District. The certificates issued by the competent authority were not considered by respondent No.2. The petitioner also contends that the petitioner had filled tender in respect of Nashik District also for similar E-tender having similar terms and conditions. He was held to be qualified for condition No.7. But the tender was rejected on condition No.8 i.e. experience certificate from the competent authority showing the works related to Lok Sabha / Vidhan Sabha elections carried for an amount equal to 80% of the

estimated amount mentioned in the said tender has not been attached by the petitioner with the bid application. The petitioner has challenged the said rejection by way of writ petition, before the Principal Seat of this Court. According to the petitioner the interpretation, in respect of term / condition No.7 as regards the Envelope No.1 of the tender document, has been wrongly pressed into service by respondent No.2 and therefore, the rejection is illegal.

5. Learned Advocate Mr. Katneshwarkar appearing for the petitioner has taken us through all the documents, especially the tender conditions wherein as regards the Envelope No.1 (Technical Envelope) a list has been given of the documents. We are more concerned with term / condition No.7 of the said list of documents, which runs thus:-

"7. मागील ५ वर्षाच्या कालावधीत लोकसभा सार्वत्रिक निवडणूकीत २ जिल्ह्यांना एकाच वेळी काम केल्याबाबतच मंडप, फर्निचर व इतर अनुषंगिक साहित्य भाडे तत्वावर पुरवठा केल्याबाबतचे सक्षम प्राधिकारी यांनी दिलेले अनुभव प्रमाणपत्र जोडणे आवश्यक आहे."

. English translation of the above-said term / condition No.7 is as under:-

"7. It is necessary to attach an experience certificate issued by the Competent Authority regarding the supply of pendal (pavilion), furniture and other ancillary materials on lease for serving 2 districts simultaneously in the Lok Sabha General Elections during the last 5 years."

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

6. Learned Advocate for the petitioner has then taken us through the certificate issued by Additional Assistant Election Officer, 24-Kalyan Lok Sabha Constituency, 141-Ulhasnagar Vidhan Sabha Constituency, dated 20th June 2019, stating that in the elections of Lok Sabha the petitioner was given the contract and he has done the work for Kalyan as well as Ulhasnagar constituencies. He also points out the revised certificate dated 5th January 2024 issued by the Deputy Collector cum Deputy District Election Officer, Pune regarding supply of the material in Lok Sabha General Elections for 2019 for the entire Pune District. Learned Advocate categorically mentions that the petitioner is not challenging the term / condition No.7 but the petitioner challenges the interpretation that has been put by respondent No.2. Condition No.7 does not, in any manner, speak that the work should have been done in the entire District. If the work is

allotted to many persons / contractors by the competent authority by dividing, then it cannot be said that on his volition the said contractor has not carried out the work in the entire District. He, therefore, prays for setting aside the rejection of the bid of the petitioner and holding him as qualified.

7. Learned AGP relies on the affidavit-in-reply filed by Kishor Ambadas Kadam, Tahasildar (Election) at Collector Office, Jalgaon. It has been filed on behalf of respondent No.2 wherein it has been submitted that the interpretation put by the committee who was managing the tender process, is correct. The petitioner has not done the work for entire Thane District, which was the condition precedent in condition No.7. This Court at Nagpur Bench in *Meenakshi Traders vs. the State of Maharashtra and others (Writ Petition No.7006 of 2023 and other connected matters)*, decided on 17th October 2023, had held that there is no fundamental right available to any of the tenderers to do business with the Government, what to say about business with Government on their own conditions. It was found that the tender conditions, especially condition Nos. 7 and 8 were held to be having some rational and should be germane to the nature of work to be performed by the tenderer. It has been further pointed out on behalf of respondent No.2 that

before the committee there were four tenderers and the other three tenderers had worked for two entire Districts and therefore, if the preference is given to respondent No.3, then the petitioner cannot be said to be aggrieved.

8. Learned AGP relies on the said decision of this Court, Bench at Nagpur in *Meenakshi Traders vs. the State of Maharashtra and others* (supra) as well as decision in *M/s. Agmatel India Pvt. Ltd. vs. M/s Resoursys Telecom, AIR 2022 SC 1103*, wherein it has been observed that :-

“The author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or sub-serving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the Constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given.”

9. Respondent No.3 has filed affidavit-in-reply and submits that he had produced all those necessary documents which have been considered by respondent No.2 and appropriate decision has been taken. Learned Advocate for respondent No.3 also relies on the decision in *Meenakshi Traders vs. the State of Maharashtra and others* (supra) to say that condition No.7 has

been upheld by this Court. Learned Advocate for respondent No.3 then relies on following decisions:-

" (1) *N.G. Projects Limited vs. Vinod Kumar Jain and others*, AIR 2022 SC 1531,

(2) *Jagdish Mandal vs. State of Orissa and others*, (2007) 14 SCC 517,

(3) *Central Coalfields Limited and others vs. SLL-SML (Joint Venture Consortium) and others*, AIR 2016 SC 3814,

(4) *Ramana Dayaram Shetty vs. International Airport Authority of India and others*, AIR 1979 SC 1628,

(5) *Michigan Rubber (India) Ltd. vs. the State of Karnataka and others*, AIR 2012 SC 2915,

(6) *Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. and others*, AIR 2016 SC 4305,

(7) *The Silppi Constructions Contractors vs. Union of India (UOI) and others*, (2020) 16 SCC 489,

(8) *Uflex Ltd. vs. Government of Tamil Nadu and others*, (2022) 1 SCC 165,

(9) *Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers vs. New J.K. Roadways, Fleet Owners and Transport Contractors and others*, MANU/SC/0959/2020,

(10) *Santosh Sakharam Chandre vs. the State of Maharashtra and others*, decided by this Court on 15th March 2023 (Writ Petition No.112 of 2022)."

10. As aforesaid, this is a question of interpretation of Condition No.7 as regards the Envelope No.1 of the tender document. It is quite clear that Condition No.7 does not use the

word " पूर्ण " (whole) specifically. But certainly respondent No.2 was aware about the fact that in a District there can be two or more constituencies, yet Condition No.7 was not so worded. Here we are aware that in ***Meenakshi Traders vs. the State of Maharashtra and others*** (supra), challenge was to Condition Nos. 7 and 8 but perusal of the said Judgment would show that the said challenge was on different footing. It was stated that the said conditions were absolutely arbitrary, unreasonable and suffers from the vice of *mala fides* and therefore, prayer was to quash those conditions. But this Court, by order dated 17th October 2023, upheld those conditions and dismissed the Writ Petition. At the cost of repetition, it can be said that the present Petition is based on the alleged wrong interpretation put by respondent No.2 of Condition No.7 of the tender document. In other words, there was no intention the part of the petitioner to challenge the legality, validity of Condition No.7 in the present Petition. Therefore, certainly we cannot dispose of the Writ Petition only on the basis of the decision in ***Meenakshi Traders vs. the State of Maharashtra and others*** (supra).

11. Now coming to the challenge by the petitioner, certainly the petitioner had produced on record two certificates issued by two competent authorities. There is no issue in respect of

certificate issued by the competent authority from Pune. It clearly says that the petitioner had done the work in respect of entire Pune District. However, as regards the another certificate is concerned, it is issued by the Election Officer who was concerning to Kalyan Lok Sabha constituency and Ulhasnagar Vidhan Sabha constituency. The petitioner has produced the tender invited by the District Collector and District Election Officer, Thane and also the work order issued to the petitioner. It appears that though the tender was in respect of entire Thane District, the work order says that the work was divided amongst nine contractors and in the said division, work of Kalyan and Ulhasnagar was given to the petitioner. Now the petitioner cannot be faulted for such division of work but it appears that the said division / distribution of the work was never challenged either by the petitioner or by any of the other eight contractors. Now the certificate has been given only in respect of particular constituencies. Whether to accept the same for the entire District taking into consideration the fact that the said work order was in pursuant to the E-tender for the entire District, will have to be left to present respondent No.2. That liberty is available to respondent No.2 in view of *M/s. Agmatel India Pvt. Ltd. vs. M/s Resoursys Telecom* (supra).

12. We are aware of the decision in **Jagdish Mandal Vs. State of Orissa, (2007) 14 SCC 517**, wherein Hon'ble Supreme Court has held that :-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality; unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil Court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and

millions and may increase the project cost manifold. Therefore, a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

13. We would like to rely on the observations from the recent decision by the Hon'ble Supreme Court in **M/s. N.G. Projects Limited (Supra)**, in which the earlier decisions have been taken note of and it has been observed that :-

"23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The court does not have

the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a *mala fide* manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which they present-day Governments are expected to work."

14. The scrutiny-sheet produced along with the affidavit-in-reply of respondent No.3 would show that the other bidders appears to have worked for entire two or more Districts and the petitioner was the only bidder whose second certificate was not in respect of the entire District. Therefore, the interpretation put by respondent No.2 cannot be said to be with *mala fide* intention or arbitrary. The disqualification can be said to be justified. No

case is made out for exercise of the constitutional powers of this Court and the Writ Petition deserves to be dismissed.

14. Accordingly, the Writ Petition stands dismissed. Rule stands discharged.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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