



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO.3667 OF 2024

Jawahar Speakers and Mandap Contractor,
Through it's Proprietor,
Datta Vishvambharrao Bhosale,
Age 58 yrs., Occ. Proprietor,
R/o Shiv Chhatrapati Nagar, HUDCO Colony,
Shree Kshetra, Tuljapur – 413 601,
Dist. Dharashiv.

... Petitioner

... Versus ...

- 1 The District Collector,
Latur and/or District Election Officer,
Latur.
- 2 Additional District Election Officer,
Latur.

... Respondents

...

Mr. D.S. Bagul, Advocate for petitioner
Mr. K.S. Patil, AGP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 08th APRIL, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present writ petition has been filed to direct respondent

authorities to consider the applications submitted by petitioner dated 26.02.2024 and 28.02.2024 and further to follow clause 4.4.4.1 of the Government Resolution dated 01.12.2016 by calling negotiation. The petitioner challenges the manual comparative chart prepared by respondent authorities to be quashed and set aside.

2 The petitioner in the present writ petition is a proprietary firm that possesses experience in erecting mandaps / pandals and electrical decoration related to the mandap and other necessary things which are required for the purpose of various religious, social and cultural activities. Respondent No.1, the District Collector, Latur has issued e-tender on 06.12.2023 and thereby invited applications from interested bidders for supply of mandap, furniture and other material on rent basis/lease basis (hereinafter to be referred as “the said work”) for the ensuing elections of Lok Sabha and Vidhan Sabha General Election, 2024 for Latur district. It is the case of the petitioner that the financial position of the petitioner is very strong and the petitioner do possess relevant experience in supply of electrical items as well as mandap and other necessary items required for conducting of General Elections and to support the said contention the petitioner has produced various necessary documents in possession of petitioner such as requisite license under the Maharashtra Shops and

Establishment (Regulation of Employment and Conditions of Service) Rules, 2008, PAN card, certificate of turnover issued by the Chartered Accountant, valid income tax returns etc. In past the petitioner was allotted work for supply of electrical items, mandap, furniture and other necessary items on rent basis required for conducting of Lok Sabha / Vidhan Sabha General Election, which the petitioner has successfully completed in the year 2019 and accordingly the respondent authorities have issued work done certificate in favour of the petitioner. The petitioner is doing the said work since 2000. The turnover certificate issued by the Chartered Accountant clearly shows that the turnover of the petitioner is more than 8 crores from financial year 2019-2020 till 2022-2023. For the Lok Sabha General Election, 2024, the petitioner was allotted the said work vide order passed by the Collector Office, Solapur. Petitioner has further undertaken the General Election work of Municipal Council, Tuljapur, for which certificate of appreciation has been issued in its favour by various departments.

3 It is the case of the petitioner that the District Election Officer, Latur published E-Tender No.11/2023 and thereby invited the applications from interested bidders for supply of mandap, furniture and other material on rent basis / lease basis for the ensuing Lok Sabha and Vidhan Sabha General Election, 2024 for Latur district. The said tender was published on

07.12.2023 and the last date for submission of tender was 22.12.2023 up to 6:00 p.m. The petitioner participated in the said tender process, by downloading the necessary e-tender notice and by paying requisite EMD amount and on 26.12.2023, the petitioner submitted the tender. In the said tender notice, in all 10 tenderers have participated, out of which 05 were declared ineligible. As such, comparatively BOQ (Bill of Quantity) was prepared by the authorities Online, in which petitioner was the lowest one i.e. L1, as petitioner quoted the lowest amount. After opening of BOQ the authorities were duty bound to follow and call the petitioner for negotiation. In view of clause 42 of the tender notice, the authorities have prepared the consolidated comparative chart by considering the number of items and their price and thereafter, declared L1 to one Sahyog Seva Kendra, Nanded, as the said bidder has quoted an amount of Rs.20,04,44,820/-. The petitioner was declared as L2 as the petitioner has quoted Rs.20,78,08,433.9/-. The estimated cost of the tender is Rs.6 Crore whereas, both L1 and L2 has quoted more than 20 Crores. Further, after the preparation of manual comparative chart, the authorities have declared Sahyog Seva Kendra, Nanded as L1 and as such by passing a resolution on 07.02.2024 decided to call L1 for negotiation. It is the contention of the petitioner that it was L1 at the time of BOQ. The authorities were duty bound to call upon the petitioner for negotiation in pursuant to the Government Resolution dated 01.12.2016.

Therefore, the petitioner vide application dated 26.02.2024 requested the authorities to call the petitioner for negotiation and petitioner has further offered less amount of Rs.3,94,36,073/-.

4 The petitioner again vide its application pointed out comparative chart indicating rates given by L1, which shows that rates given by petitioner is less than the rates given by L1. However, it is further contention of the petitioner that the Assistant District Election Officer, Latur, vide its letter dated 21.02.2024 requested L1 to visit the office of Collector, Latur, on 22.02.2024 and further deposit the EMD amount in the bank account mentioned in the letter and further directed to complete the agreement on a stamp paper of Rs.500/-. It is further case of the petitioner that the other District Officers, by following the Government Resolution dated 01.12.2016 called for negotiation to various contractors including petitioner, so the respondent authorities are duty bound to follow the Government Resolution dated 01.12.2016 and call petitioner for negotiation. It is further contention of the petitioner that the respondent authorities are acting under the pressure of L1 who is a strong supporter of local politician from Nanded and, therefore, the respondent authorities are showing favoritism to the L1. Hence, this writ petition.

5 Heard learned Advocate Mr. D.S. Bagul for the petitioner and learned AGP Mr. K.S. Patil for respondent Nos.1 and 2.

6 The small point involved in the writ petition is that the petitioner wants to take advantage of Government Resolution dated 01.12.2016 and says that petitioner should be called for negotiations. Petitioner is accepting that he is L2. Perusal of Government Resolution dated 01.12.2016 would show that it lays down the procedure for purchase of articles required for the Government offices. The petitioner is relying on clause 4.4.4.1 of Government Resolution dated 01.12.2016 which states that after competitive bids have been received then at any rate there should not be insistence on negotiation. Negotiation would send wrong signals in the market and it will raise suspicion of the tender. Only in certain circumstances negotiation can be made with L1. It says that – 1) when price of certain articles which has been quoted is unjustifiable or it is more than the market rate, 2) if the bidders have formulated association (cartel); 3) if it is not possible to verify minimum three valid bids. Thus, if it is to be seen the tenor of this procedure then, in fact, the act of negotiation is prohibited. Therefore, petitioner cannot insist that the tendering authority ought to have called petitioner for negotiation. Another fact to be noted is that this condition is in the Government Resolution dated 01.12.2016 and the said Government

Resolution dated 01.12.2016 was issued by Industry, Power and Labour Department of the Government. The tender in the present case was published by District Collector-cum-District Election Officer, Latur. Even if for the sake of arguments it is accepted that the said Government Resolution can be made applicable to the other Government departments; yet, it cannot be said that the District Election Officer is part of General Administration of the State Government. The District Collector assumes charge of District Election Officer only when the elections become due or announced or the Election Commission declares a programme. Therefore, *ipso facto* the said Government Resolution cannot be made applicable. Even if for the sake of arguments it is accepted that the said Government Resolution was applicable in case of the present tender; yet, the said condition 4.4.4.1 cannot be so interpreted as the petitioner wants to interpret. There is no illegality or error in action from the respondents for not to have negotiations with the petitioner and L1. There is no merit in the present petition. It deserves to be dismissed. Accordingly, the writ petition stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)