



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 179 OF 2024

M/s Syncots Exim Pvt. Ltd.,
Through its Authorized Officer,
Saurabh Kulbirsingh Mankoriya,
Age : 50 years, Occu. : Service,
R/o Flat No. 192, Gangotri Apartment,
Pocket – 1, Sector 12, South
West, New Delhi.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Sports and Youth Service Department,
Mantralaya, Mumbai.
2. The Director,
Directorate of Sports and Youth
Service Department, Shivchatrapati
Shivaji Sankul, Mhalunge,
Balewadi, Pune – 411 045.
3. The Divisional Commissioner,
Commissioner Office, Aurangabad.
4. Dy. Director and Secretary,
Divisional Sports Complex,
A-Wing Room No. 1, Near Main
Entry Gate, Garkhed Parisar,
Aurangabad.
5. M/s Sportina Exim Pvt. Ltd.
Having registered office at
D. J. House, 2nd Floor, Old Nagardas
Road, Andheri (East),
Mumbai.

.. Respondents

Shri Shivraj B. Kadu, Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 to 4.

Shri Sandeep B. Gorde Patil, Advocate for the Respondent No. 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 30 SEPTEMBER 2024.

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent of parties heard finally as there is urgency in the matter. Due to pendency of present petition the tender process in question has not been finalized.

2. The petitioner has invoked jurisdiction under Article 226 of the Constitution of India to challenge the eligibility of the respondent No. 5/bidder. It is seeking a relief of declaration that the respondent No. 5 be declared to be disqualified in the technical bid. The consequential orders are also solicited.

3. This petition pertains to tender process of the work of construction of 8 Lane, 400 M. Synthetic Athletic Track & Associated Field Work Along with FIFA Standard Football Ground at Divisional Sports Complex, Aurangabad (hereinafter referred as to the 'work of sports complex' for the sake of brevity and convenience). A tender notice was issued on 04.08.2023 by the respondent No. 4/Deputy Director for entrusting work of sports complex. The petitioner, the respondent No. 5 and four others participated in the tender process and submitted their bids along with requisite documents.

4. The technical bids were assessed on or about 29.08.2023. Four out of six participants were declared to be qualified in the technical bid including the petitioner and the respondent No. 5. The objections in writing were raised, not by the petitioner, but by other tenderers regarding eligibility of the respondent No. 5 and another bidder - M/s Advanced Sports Technologies LLP. The matter was referred to the Architect of Divisional Sports Complex Chhatrapati Sambhajanagar, M/s Shashiprabhu Associates. The report was submitted on 05.12.2023, over ruling the objections. Then, the petitioner has approached this Court.

5. The learned counsel for the petitioner Mr. Kadu submits that the respondent No. 5 is not eligible and its bid is non compliant with the eligibility condition provided in the tender document. The experience certificates produced on record by the respondent No. 5 were not in consonance with the eligibility criteria. No experience certificates of the authority not below the rank of Executive Engineer or equivalent was submitted by the respondent No. 5. It is vehemently submitted that due to the qualification of the respondent No. 5 in the technical bid, the petitioner has to face unfair competition, which is likely to cause hardship and would amount to unfair play. It is submitted that the tender process is vitiated by mala fides and bias.

6. The learned Additional Government Pleader appearing for the respondent Nos. 1 to 4 repels the submissions of the petitioner by relying on the affidavit in reply. It is submitted that

the petitioner has no *locus standi* to maintain the petition as it did not raise any objection in writing for the eligibility of the respondent No. 5. The objections received vide letter dated 11.09.2023 and 30.11.2023 were referred to the architect. After due scrutiny, the objections were found to be meritless. The learned Addl. G. P. would advert our attention to the para Nos. 10 and 11 of the reply, to demonstrate that the certificates produced by the respondent No. 5 are compliant with the tender conditions. He would submit that there is no material to show any *mala fides* or breach of any statutory procedure and the petition is liable to be dismissed.

7. The learned counsel Mr. Sandeep Gorde appearing for the respondent No. 5 supports and adopts the submissions of the learned Addl. G. P. He would additionally submit that the certificates and the documents submitted along with bid were in consonance with the tender condition. After due scrutiny, it was found to be qualifying technical bid. He places reliance on the judgment of the Supreme Court in the matter of Silppi Constructions Contractors Vs. Union of India and another reported in *(2020) 16 SCC 489* to point out scope of judicial review in the tender matters and prays to dismiss the petition.

8. Before advertng to merits, it is necessary to mention that tender notice was floated on 04.08.2023 and the technical bids were opened on 29.08.2023. The petitioner approached this Court on 08.12.2023. While issuing notices by way of an ad-interim directions, the financial bids to be opened were made

subject to the outcome of this petition vide order dated 11.01.2024. Thereafter no further progress took place. The financial bids have not been opened due to pendency of present petition.

9. The eligibility condition in respect of experience of a bidder is stipulated in the tender notice below Clause No. 15, which is as follows :

Note Regarding similar work completion certificate :-

1. Bidders should attach work completion certificate from Govt / Semi Govt / SAI / reputed educational institute from client not below the rank of Executive Engineer or equivalent.
2. In case of work completion certificate issued by reputed Private organization then bidder must submit work order / agreement copy, TDS certificate, along with satisfactory work completion certificate.

10. It reveals from record that corrigendum 3 was issued, which is as follows :

Bidder must have supplied and installed minimum 5 World Athletics (IAAF) approved 400 m. synthetic athletic tracks cast-in-situ (Full PUR or sandwich or Full EPDM) systems in India including complete sub-base out of which at least 1 should have been supplied and installed in the last 3 years ending the last date of the previous month of the tenders floatation in their individual capacity and not as Joint Venture.

11. The petitioner, respondent No. 5 and four others participated in the tender process. The technical bids were opened on 29.08.2023 qualifying the petitioner as well as the respondent No. 5. The petitioner did not raise any objection for the eligibility of the respondent No. 5. Whereas M/s Great Sports Tech Limited had raised objection vide letter dated 11.09.2023 and thereafter vide letter dated 30.11.2023. The tender authority referred the matter for the scrutiny to the architect of Divisional Sports Complex, namely M/s Shashiprabhu Associates.

12. The learned Addl. G. P. adverts our attention to report of M/s Shashiprabhu Associates submitted on 05.12.2023. The respondent No. 5 was reported to be complying with the eligibility condition regarding previous experience and no fault could be found. The eligibility of the respondent No. 5 was examined by the tendering authority. The tendering authority after soliciting expert's opinion maintained the technical assessment, which shows that due care was taken and the objections were properly dealt with.

13. The experience certificates submitted by the respondent No. 5 along with bid are on record. We have gone through those certificates which are from page Nos. 213 to 219 of the paper book of the petition. The certificates were issued by Assistant Commissioner of Police, Mumbai, Railway Police Commissionerate. It is not that only certification of authority not below the rank of Executive Engineer or equivalent was required

to qualify the bid. The Assistant Commissioner of Police issuing experience certificate cannot be treated to be incompetent. The respondent tendering authority is justified in qualifying the respondent No. 5.

14. We have gone through paragraph Nos. 10 and 16 of the affidavit in reply of the respondent Nos. 3 and 4. There is no reason to discard the contentions regarding previous experience of the respondent No. 5 which was found to be compliant with the eligibility condition. The petitioner failed to substantiate the ground of mala fides or bias. We endorse that the respondent No. 5 is one of the qualified bidders.

15. The learned counsel for the respondent No. 5 has referred to the judgment of the Supreme Court in the matter of **Silppi Constructions Contractors Vs. Union of India and another** (supra). The ratio laid down in various judgments is summed up and extracted in following paragraphs.

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. contracts entered into

between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to

prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

16. It is pertinent to note that stipulation regarding work completion certificate (supra) is divided in two parts. Only in first part, where the experience quoted is regarding works undertaken in public sector that experience certificate is required to be signed by the client not below the rank of Executive Engineer. As regards experience in private sector, second part does not contain any such certificate of any Executive Engineer and submission of work order satisfactory work completion certificate, etc. are sufficient.

17. This clearly demonstrates that the purpose of having experience certificate is limited in ascertaining capacity to undertake the work to be performed and nothing beyond that. If as discussed hereinabove a case has been taken to ensure from an expert about capacity of respondent No. 5 to do it, having extended a similar work in respect of railway police, as certified by the Commission of Railway Police who himself is a high ranking officer, in our considered view, following the principles laid down in Silppi Constructions Contractors Vs. Union of India and another (supra), no fault can be found with the decision of the respondent No. 4 in holding the respondent No. 5 to be compliant with the condition in question. It cannot be said that the decision is a clear cut arbitrary or taken in ignorance of overwhelming public interest.

18. We find that no case is made out to cause any interference in tender process. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / Sept. 24