

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5400 OF 2024

B-Right Real Estate Limited
Having its Registered office at 702,
Shah Trade Centre, Rani Sati Road,
Next to Western Express Highway,
Malad (East) Mumbai – 400097 : Petitioner

Vs.

1. Pune Metropolitan Region
Development Authority Pune
Through the Deputy Commissioner,
Land and Estate Department,
3rd Floor PMRDA,
Akrudi, Pune. Maharashtra – 411044

2. Metropolitan Commissioner
and Chief Executive Officer,
PMRDA, Having his office at New
Administrative Building, Akrudi,
Pune – 411007, Maharashtra.

3. Deputy Commissioner (Land and
Estate Department)
PMRDA, Having his office at
3rd Floor, PMRDA Akurdi,
Pune – 411007, Maharashtra : Respondents

Dr. Milind Sathe, Senior Advocate, a/w Mr. Chirag Kamdar, Ms.
Sonam Mhatre, Ms. Saloni Sulakhe and Mr. Punit Agarwal i/by
Dhaval Vussonji and Associates for the Petitioner.

This order is corrected pursuant to the speaking to minutes order dated 12th April, 2024.

Mr. Rohit Sakhadeo for Respondent Nos. 1 to 3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 10th APRIL 2024**

JUDGMENT : (PER ARIF S. DOCTOR)

1. The Petitioner has in the captioned Writ Petition sought the following reliefs:-

- (a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ in the nature of mandamus or any other appropriate writ, direction or order directing the Respondents and their officers and agents to accept the submission of bid of the Petitioner for the E-Auction of the leasehold rights in respect of the said Leasehold Land to be held on 12th April 2024.*
- (b) In the alternative, that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ in the nature of mandamus or any other appropriate writ, direction or order directing the Respondents to extend the date of submission of bids for the E-Auction of the Lease Rights over the said Lands to be held on 12th April 2024;*

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(c) *In the alternative, that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ in the nature of mandamus or any other appropriate writ, direction or order directing the Respondents to extend the date of the E-Auction of the Lease Rights over the said Lands to be held on 12th April 2024.*

2. Respondent No. 1 had on 12th March, 2024 issued a Public Notice through Respondent No. 2 on its website inviting proposals for e-auction for grant of lease of 7.14 hectares of land bearing Final Plot No. 19 and Final Plot No. 20 of TPS-1 admeasuring about 71,400 square meters situated at Bhamburda, (Shivajinagar) old Bombay – Pune Road, Pune City, for a period of eighty years. A perusal of the Request for Proposal (RFP) *inter alia* reveals that the reserve price for said plot was Rs. 397.50 crores, and that prospective bidders were required to submit (a) an earnest money deposit of Rs. 20 crores (b) a performance bank guarantee of Rs. 20 crores and an RFP fee of Rs. 1 lakh. The RFP further sets out the following “*Important Dates*” viz.

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Important Dates	Milestone	From Date/Time	To Date/Time
	RFP document download	12.03.2024 12.00 hrs (IST)	02.04.2024 12.00 hrs (IST)
	Last date for query	15.03.2024 at 15.00 hrs (IST)	
	Pre-Bid Meeting	18.03.2024 at 15.00 hrs (IST)	
		Venue: PMRDA, New administrative building, Opposite Akurdi Railway Stn., Akurdi, Pune Maharashtra – 411044 India	
	Late date of online submission both documents (Financial & Technical)	02.04.2024 at 12.00 hrs (IST)	
	Date of e-Auction	12.04.2024	

3. Dr. Sathe Learned Senior Counsel appearing on behalf of the Petitioners essentially made two-fold submissions in support of the reliefs prayed for. His *first* submission was that the Respondents had not given adequate publicity to the e

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auction and that the same was published only on the website of Respondent No. 2. He submitted that resultantly the Petitioner did not have adequate time to make the requisite submissions before 2nd April, 2024 i.e. the last date as per the RFP. It was thus that Dr. Sathe submitted that the time to submit the bids be extended and/or that the Petitioner's bid be accepted since the same was being submitted before the date of the e-auction which was on 12th April, 2024. Dr. Sathe then stated if the Petitioner was permitted to submit its bid the same would not prejudice any party but infact encourage competition since the Petitioners bid was well over the reserve price of Rs. 397.50 crores.

4. The *second* submission of Dr. Sathe was that even though the date for the e-auction was 12th April 2024, the result of the e-auction would not be declared on that date in view of the code of conduct imposed by Election Commission of India which was in force for the ensuing elections. Basis this he submitted that there was no reason as to why the Respondents

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could not permit the Petitioner to participate in the said e-auction. He submitted that the Petitioner had infact made a representation to the Respondents, however the same had not been responded to. He submitted that the Respondents ought to be directed at least to consider the Petitioners representation before proceeding with the e-auction.

5. *Per Contra* Mr. Sakhadeo Learned Counsel appearing for the Respondents opposed the reliefs sought for. He pointed out that more than adequate time and notice for participation had been given by the Respondents. He pointed out that from a plain reading of the averments in the Petition shows that the Petitioner was aware of the tender and had adequate time to participate but had not done so. He submitted that the Petitioner had not made out any case as to why they should, after expiry of the timelines prescribed in the RFP, be permitted to participate in the said e-auction. He then invited our attention to clause 8 of the RFP and pointed out that the same clearly stipulated that Respondent No. 1 shall not in any manner be responsible for delay in online submission *due to any reason* and

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that the *bidders were required to upload their complete bid proposal well in advance so as to avoid any unforeseen problems.*

6. After having heard Learned Counsel, we find that the Petitions deserves to be dismissed for the following reasons, viz.

A. The primary contention of the Petitioner was that on account of inadequate publicity the Petitioner was unable to participate/submit its bid. We find that this contention is plainly not sustainable and is entirely lacking in bonafides. There is not even a whisper in the Petition that the Petitioner was precluded from participation in the tender and/or unable to submit its bid on account of any lack of publicity as has been orally submitted.

B. *On the contrary*, the Petitioner has the representation made to the Respondents (which is dated 5th April, 2024¹ i.e. three days after the last date for bid submission) stated

1 Exhibit D pg. 74

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"Regrettably, we missed the bid submission application date of 2nd April 2024 due to unforeseen circumstances".

Likewise, in the Petition it is *inter alia* stated that *"The Petitioner submits that due to the detailed bid submission requirement, the Petitioner faced unintentional delay in submission of its bid on or before 2nd April 2024²"* and *"Thus, by condoning the Petitioner's inadvertent and unintentional delay in submitting the bid, no prejudice, hardship, or disadvantage shall be caused to the Respondents.³"* Clearly therefore, the Petitioners inability to participate was not for any fault and/or reason of the Respondents but was solely due to the Petitioners lack of alacrity and nothing else.

C. *Equally*, the Petitioners second submission, that no prejudice would be caused to anyone if the Petitioner's was permitted to submit its bid and/or participate in the e-auction, while at first blush seems innocuous the same infact is not. The law with respect to judicial intervention in

2 Paragraph 14 page 7

3 Paragraph 19 page 9

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tender matters is only too well settled in as much as the Court will not interfere in tender matters and/or the tender process unless it is found that the conduct and/or action of the tendering authority is arbitrary, irrational, perverse or *mala fide* as held by the Hon'ble Supreme Court in the case of ***Tata Motors Vs. Birhan Mumbai Electric Supply Transport (BEST) and others***⁴. In the present case we find that there is not even a hint to suggest that the conduct of the Respondents is in any manner arbitrary, irrational, perverse or mala fide.

D. *Also*, as already noted above while the prayer to permit the Petitioner to participate though seemingly innocuous, would if granted, have deleterious effects. Aside from the fact that the scope of judicial review in tender matters is extremely circumscribed as laid down by the Hon'ble Supreme Court in a catena of cases, including ***Tata Cellular vs. Union of India***⁵ and ***Michigan Rubber India vs. State of Karnataka and others***⁶, any such interference would then

4 2023 SCC OnLine SC 671

5 (1994) 6 SCC 651

6 (2012) 8 SCC 216

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embolden prospective bidders *who without any compelling reasons* would seek participation in the tender process by ignoring the timelines set out by the tendering authority and infact permitting participation contrary to terms of the tender. This would effectively result in Court rewriting the terms of the RFP which in our view is wholly impermissible and lies squarely within the domain of the tendering authority.

- E.** Thus in our view, to permit the reliefs sought for by the Petitioners would unsettle the entire object and purpose of the tender process. As noted above the terms of a tender are within the sole and exclusive domain of the tendering authority. These terms would naturally include the timelines prescribed in the tender document which undoubtedly have been fixed so as to best ensure that the object of the tender is achieved in the manner contemplated by the tendering authority and keeping in mind the best interests of the tendering authority.

F. Therefore, absent the tendering authority acting in an arbitrary, irrational, perverse or *mala fide* manner or the Petitioner establishing that the timelines so fixed were impracticable so as to exclude participation etc. it would not be open to us to extend the timelines fixed by the tendering authority. Equally, it would not be open to us to direct the tendering authority to accept the Petitioner's bid and/or permit the Petitioner to participate in the tender process after the expiry of the timelines set out by the tendering authority by exercising our jurisdiction under Article 226 of the Constitution unless the exclusion from participation is on the ground that the tendering authority had acted in an arbitrary, irrational, perverse or *mala fide* manner.

G. If we were to exercise our jurisdiction under Article 226 in the manner suggested by the Petitioner, the same would open the floodgates of this Court to bidders who would then demand participation in the tender process contrary to the terms and manner envisaged by the tendering

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authority in question. This cannot be permitted. We find that as it is, challenge to both the award of tenders as also the process are made in the most routine and casual manner, despite the law in respect of the same having been well settled.

7. Hence, for the aforesaid reasons we find the Petition to be one which lacks merit in its entirety. Hence we dismiss the Petition as follows;

- i. Petition is dismissed with cost of Rs.50,000/- (Rupees Fifty Thousand only).
- ii. Cost is payable to K.E.M. Hospital within a period of 30 days from the date this order is uploaded. The account details of K.E.M. Hospital are as follows;

Bank Account of Hospital	:	Poor Box Charity Fund, K.E.M. Hospital, Mumbai
Bank Account No.	:	99350100000877 (S.B.)

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Bank	:	Bank of Baroda, Parel Branch
Address, Tel. No., Fax No. and email of the concerned Bank	:	Bank of Baroda, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra, 022-24713820 dbpare@bankofbaroda.com
MICR Code No.	:	400012246
IFSC No.	:	BARB0BBPARE (5 th Letter is zero)
PAN No.	:	AAAPK3087D
Type of Account	:	Saving Account

iii. Petitioner to file with the office of the Registrar Judicial-I proof of compliance of the above within eight weeks.

iv. In the event it is found that the Petitioner has not complied with the above, suitable orders shall be passed.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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