

AGK

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

WRIT PETITION NO.7781 OF 2024

Real Enterprises,
General Government Suppliers,
through its Proprietor
Rajesh P. Nahar ... Petitioner

V/s.

The State of Maharashtra,
through the Principal Secretary,
Mantralaya, Mumbai & Ors. ... Respondents

Mr. Shekhar Jagtap, i/by Mr. Venkatesh Shinde, for
the petitioner.

Mr. A.Y. Sakhare, Special Counsel, with Mr. P.P.
Kakade, G.P., Mr. B.V. Samant, Additional G.P. and
Mrs. G.R. Raghuwanshi, AGP, for State- respondent
Nos.1 to 3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : JUNE 10, 2024

P.C.:

1. Rule. Rule made returnable forthwith. With the consent
of learned counsel for the respective parties, matter is taken
up for final disposal.

2. Heard Mr. Jagtap, learned counsel for the petitioner and
Mr. Sakhare, learned counsel with Mr. Kakade, learned
Government Pleader representing the respondents-State of
Maharashtra.

3. By instituting these proceedings under Article 226 of the Constitution of India, the petitioner which is a proprietary firm engaged in the business of manufacturing of stationery items and also General Government Suppliers of stationery items, takes exception to certain conditions of the tender issued by the respondents for supply of school kit in Government Ashram School for Students (Note book, Writing Material) for the year 2024-25 and 2025-26.

4. Taking general grounds to challenge the impugned tender conditions, learned counsel representing the petitioner has drawn our attention primarily to clauses 5.3.11, 5.3.12, and 5.3.14 of the terms of the tender and has submitted that said tender conditions are unlawful being arbitrary and irrational. He has further argued as far as tender conditions 5.3.11 and 5.3.12 are concerned that the conditions of supply of printing paper which is manufactured from agro based virgin pulp cannot be said to have any rationale which is the object sought to be achieved and further that the requirement of average annual turnover of the bidder to be Rs.15 Crore in any three of the preceding financial years is also arbitrary.

5. Mr. Jagtap arguing for the petitioner further stated that the conditions occurring in clause 5.3.14 which provides that the paper mill can issue only one authority letter to only one bidder is also absolutely arbitrary and illegal since it has a very serious consequence on the fairness and transparency of the tender process inasmuch as it restricts fair competition which is one of the purpose for which the process of tender is

resorted to. In his arguments, he has further stated that if a manufacturing paper mill is restricted to issue authority letter only to one bidder, there may be many other bidders who may be in a position to procure such authority letter; however, because of the impugned condition they shall be deprived of their right of participation in the competitive bidding process for supply of printing paper which will be in infringement of the fundamental rights of such prospective bidders enshrined under Article 19(1)(g) of the Constitution of India. The submission is that it is for the reasons aforesaid that the impugned conditions in the tender are liable to be struck down and any process based thereon is also liable to be quashed.

6. Mr. Sakhare, on the other hand, representing the State-respondents has categorically argued that none of the grounds taken in the writ petition are sustainable. He has stated that it is the choice of the tendering authority to specify nature of a product to be procured by it and further that fixation of requirement of average annual turnover is also the prerogative of the tendering authority which is done in order to ensure that the tenderer will ultimately be in a position to make adequate, prompt and timely supply of the item to be procured.

7. As regards tender condition 5.3.14, he has argued that no prejudice is going to be caused to the suppliers if the paper mill has been restricted to issue one authority letter to one bidder. So far as the parties intending to participate in the bid are concerned, the argument that there is prejudice being

caused to the petitioners or any other like bidders on account of such condition, is also not tenable.

8. We have given our anxious consideration to the submissions made by learned counsel representing respective parties and have also perused the record available before us on this writ petition.

9. To appreciate the respective submissions, we may extract clauses 5.3.11, 5.3.12 and 5.3.14 of the tender conditions, which learned counsel for the petitioner has argued to be illegal and arbitrary. Clause 5.3.11 runs as under:

“5.3.11. The Bidder should submit Certificate of the paper mill duly certified by the C.A. for production & clearance of average of 20000 MT writing and printing paper manufactured from agro based virgin pulp in any 3 of 5 financial years i.e. 2018-19, 2019-20, 2020-21, 2021-22, and 2022-23.”

10. Clause 5.3.12 is also extracted hereunder:

“5.3.12. The Average Annual Turnover of the Bidder is at least Rs.15 Cr. In any 3 of the preceding financial years, i.e. 2018-19, 2019-20, 2020-21, 2021-22, and 2022-23. Certified by C.A. with valid UDIN Code”

11. Clause 5.3.14 is quoted hereunder:

“5.3.14. **Authority Letter** -

a) The bidder should attach an authority letter provided by the paper mill manufacturer for agro-based paper confirming to supply as per the specification of the tender. Paper mill can issue only one authority letter to

only one bidder.

b. For notebooks & writing materials, if the tenderer is not the manufacturer then he should attach an authority letter provided by the manufacturer confirming to supply as per the specification of the tender. Manufacturer can issue only one authority letter to only one bidder.”

12. So far as clause 5.3.11 is concerned, it requires the suppliers to supply the paper which is manufactured from agro-based virgin pulp. The raw material for manufacturing paper may be either agro-based virgin pulp or otherwise; however, if a particular tendering authority intends to seek supplies of a product of a particular nature, such a condition prescribing the nature of the product to be manufactured from a particular raw material has to be necessarily within the prerogative and preserve of the tendering authority. Such a condition cannot be taken exception of by the manufacturer for the reason that it is the tendering authority which is the best judge of the product to be procured by it.

13. In respect of clause 5.3.12, we find that the challenge made in this writ petition is not tenable for the simple reason that as to what has to be in average annual turnover of the bidder, again, is an issue which lies in the exclusive domain of the tendering authority unless, of course, the annual turnover is obnoxiously high or unachievable.

14. In this view of the matter, we do not find any ground as urged by the petitioner tenable for quashing clauses 5.3.11 and 5.3.12.

15. Much emphasis has been laid by the learned counsel for the petitioner on clause 5.3.14 which *inter alia* provides that a paper mill can issue only one authority letter to only one bidder. The question which falls for our consideration while examining clause 5.3.14 is as to whether by putting such a provision in the tender condition, any prejudice is going to be caused to the suppliers, or not. The condition of issuing authority letter has been put by the impugned clause not on the suppliers but on the paper mills, i.e. manufacturers. There is no right vested in any supplier to seek authority letter from the manufacturer or a paper mill unless both agree on the same. In absence of any right vested or available to the supplier to seek authority letter from the paper mill, we are of the opinion that the condition as set up in clause 5.3.14 does not cause prejudice to the supplier in any manner. Prejudice, if any, by the said condition may be caused only to the manufacturing units, i.e. paper mills.

16. Thus, in absence of any prejudice being caused by putting the impugned condition that the paper mill can issue only one authority letter to only one bidder, we do not find any ground available to the petitioner to challenge said clause of the tender condition as a whole.

17. For the reasons aforesaid, we are not inclined to entertain the writ petition being devoid of merits. The writ petition is hereby dismissed.

18. However, there will be no order as to costs.

19. Rule is thus discharged.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)