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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13634 OF 2024

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Expert Services Agency, through
its proprietor

... Petitioner

V/s.

Mazgaon Dock Shipbuilders Ltd.
& Ors.

... Respondents

Mr. Sanjeev P. Kadam i/by Mr. Mahendra N.
Sandhyanshiv & Mr. Prashant Raul for the
petitioner.

Mr. Arsh Misra for the respondents.

Mr. Bhaskar Jhakuria, Manager Legal, is present.

Mr. Y.R. Mishra with Mr. Upendra Lokegaonkar for
Union of India, present on notice.

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

DATED : OCTOBER 16, 2024

P.C.:

1. Heard Mr. Kadam, learned counsel representing
petitioner and Mr. Misra, learned counsel representing
respondent Nos.1 to 3.

2. By instituting this writ petition under Article 226 of the
Constitution of India, exception has been taken to clause 9(d)

of the bid document relating to the tender floated by the respondents for housekeeping work on daily basis during construction of naval ships.

3. Impugned clause 9(d) of the tender document is quoted hereunder:

"9. CONFLICT OF INTEREST AMONG BIDDERS/AGENTS:

(a) to (c) ---

(d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or"

4. It has been argued by the learned counsel for the petitioner that putting a condition that a bid submitted by a bidder shall not be considered if another bidder is having some relationship with him is unreasonable and does not have any nexus with the object sought to be achieved. It is, thus, the contention of the learned counsel for the petitioner that such a condition is clearly hit by Article 14 of the Constitution of India, and as such is liable to be struck down.

5. Learned counsel representing respondent Nos.1 to 3, on instructions, however, has stated that no bid will be rejected or declared non-responsive merely because of a bidder's relationship with another bidder. He has further stated, on

instructions, that the purpose of putting a condition that a bidder should not have conflict of interest with the other bidder is to check cartelization or monopoly, and it is not that on account of relationship alone between two bidders their bids will not be considered; rather in case two bidders having relationship submit their bids, it will be considered as to whether such bidders have any conflict of interest or they have access to information about or influence on the bid of the other bidder.

6. Mr. Kadam, learned counsel representing petitioner, however, apprehends that the petitioner's bid will not be considered only on account of his relationship with another bidder.

7. In the light of statement made by Mr. Misra, learned counsel representing respondents, the apprehension in the mind of the petitioner stands allayed.

8. We, thus, provide that the petitioner's bid shall not be declared non-responsive only on account of some other bidder having relationship with him.

9. It will, however, be open to the respondents that in such a situation they shall evaluate as to whether there exists any conflict of interest and as to whether the bidders are having access to information about or influence on the bid of the other bidder.

10. The writ petition, thus, stands disposed of in terms of the statement made by the learned counsel representing respondent Nos.1 to 3.

11. There will be no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)