

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 3120 OF 2024**

Khemchand	}	Petitioner
Versus		
The Union of India & Ors.	}	Respondents

Mr. Manish Kelkar for petitioner.

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

DATE: 27th JUNE 2024

P.C.:

- 1.** Heard learned counsel for the petitioner and perused the records.
- 2.** Though as per the learned counsel for the petitioner the respondents have been served, however, no one has put in appearance on their behalf.
- 3.** By instituting this petition under Article 226 of the Constitution of India, the petitioner, which is a partnership firm, seeks to challenge certain conditions of tender floated on 28th November, 2023 for Procurement and Operation of 16 Nos. Track Inspection and Monitoring System (TIMS) for two years during warranty and Annual Maintenance for five years post warranty and spare parts for AMC during five years post warranty. The last date of submission of the bids was 27th March, 2024, however, the petitioner, except for making certain

representation to the authorities, did not challenge the bid conditions before the last date of submission of the bids was over.

4. If the petitioner had any grievance in respect of the impugned tender conditions, he ought to have challenged the same by taking recourse to the legal remedies, including filing of a writ petition, however, once the last date for submission of bids was over, in our opinion, non-participation of the petitioner in the tender process in such a situation dis-entitles him to challenge the tender conditions at this stage.

5. Learned counsel for the petitioner states that the objections raised by the petitioner in respect of the impugned tender conditions were referred by respondent no.2 to Railway Design and Standard Organization (RDSO), as such the petitioner was thus waiting for the result of consideration of such representation by RDSO and hence, did not submit its bid.

6. Such an explanation for not challenging the impugned conditions of the tender before expiry of the last date of submission of bids, in our opinion, is not acceptable

7. Hon'ble Supreme Court in the case of **National Highways Authority of India vs. Gwalior-Jhansi Expressway Limited**, reported in **(2018) 8 SCC 243** has held as under: -

"20. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process,

cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions.”

8. We are, thus, not inclined to entertain this writ petition, which is hereby dismissed.

9. There shall be no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)

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signed by
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DASHARATH
PANDIT
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