

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3279 OF 2024

Sai Works, through its partner	}	
Ravi Kiran Ramakant Sawant	}	Petitioner
versus		
Oil and Natural Gas Corporation	}	
Limited & Anr.	}	Respondent

Ms. Bushra Sayed with Mr. Norbert D'souza i/b. Pragya Mishra for petitioner.

Mr. Shavez Makri with Mr. Vaibhav Kamble i/b. A & G Legal Associates LLP for respondent.

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

DATE: 12th JULY 2024

P.C.:

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

2. By invoking our jurisdiction under Article 226 of the Constitution of India, the petitioner, which is a partnership firm and is engaged in the business of manufacturing and servicing of electrical and mechanical equipments, has challenged a tender document with a further prayer to direct the respondent-Oil and Natural Gas Corporation Limited (hereinafter referred to as "ONGC") to carry out necessary changes/modifications in the

subject tender rectifying the alleged defects/illegalities. The petitioner further states that a direction be issued to the ONGC to re-publish the tender and re-invite the bids splitting the tender into two separate parts for supply of (i) Battery Chargers and (ii) Battery Banks. In sum and substance, the petitioner challenges the tender conditions.

3. Notice inviting bids for Replacement of Battery Charger and Battery Bank at Smart U/M Platform of Heera Fieldon LSTK Basis was issued on 21st November 2023 and last date of receipt of clarifications for pre-bid conference was 28th November 2023. As per the tender document, which is available as Exhibit 'D' to the writ petition, pre-bid conference was to take place on 4th December 2023 and closing date and time for submission of bid was 1st January 2024.

4. The petitioner, admittedly, did not participate in the bid process and has challenged the conditions of the tender by instituting the instant writ petition, which was lodged only on 22nd March 2024. It has been informed by learned counsel representing ONGC that on 22nd March 2024 itself the technical bids have been opened and further process for opening the commercial bid etc. and finalization of the tender process is going on.

5. The first and foremost question is as to whether the petitioner can be permitted to challenge the tender conditions at this stage. The tender notice was issued on 21st November 2023, whereafter, the pre-bid meeting of the prospective tenderers took place on 4th December 2023. In the said pre-bid meeting, the petitioner did not participate, meaning thereby the petitioner did not raise any objection to the tender conditions.

The last date of submission of the techno-commercial bid was 1st January 2024 and thereafter, now, the tender bid has also been opened on 22nd March 2024. The petitioner has, admittedly, not participated in the tender process and even if it intended to participate, it could not have participated because the petitioner does not fulfill certain tender conditions. In such circumstances, the petition ought to have been filed, challenging the impugned tender conditions, before the last date of submission of the tender, which was 1st January 2024.

6. A tenderer, who does not participate in the tender process, cannot be permitted to challenge the conditions of tender. Reference in this regard can be made to a judgement of Hon'ble Supreme Court in the case of **National Highways Authority of India vs. Gwalior-Jhansi Expressway Limited**, reported in **(2018) 8 SCC 243**. The Hon'ble Supreme Court in the said case 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."

7. In view of the aforesaid facts and specially keeping in view the fact that the petition was lodged on 22nd March 2024, on which date the technical bid has also been opened and the

petitioner did not participate even in the pre-bid meeting held on 22nd March 2024, we decline to exercise our jurisdiction to entertain this writ petition.

8. The writ petition is, thus, dismissed. Rule is discharged.

9. There shall be no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)

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signed by
JAYANT
VISHWANATH
SALUNKE
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