



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1328 OF 2024

New Jwala Security Force Proprietor Vikrant Ugaonkr and others Vs. & State
Government of Maharashtra and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. (Dr) Tushar Mandlekar, Advocate and Mr. Mahendra Limaye, Advocate for petitioners.
Ms. N.P.Mehta, Addl. GP for respondent nos.1 and 2.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATED : FEBRUARY 26, 2024.

1. The respondent – Commissionerate of Health Services, Maharashtra issued Expression of Interest for Mechanized Cleaning Services in the hospitals, Primary Care Centers for the year 2023-24 for which the date of commencement of sale of Expression of Interest document was from 2nd February 2024 to 23rd February 2024.
2. In the said document, the respondents have taken a decision to invite the Expression of Interest from recognized Central Public Sector Undertaking/Enterprises working under Healthcare Sector for providing Facility Management Services in Hospitals and Primary Health Care Centers under the Commissionerate of Health Services, Maharashtra.
3. The Average Annual Value of the contract is Rs.638.02 crores.
4. As only the Central Public Sector Undertaking/Enterprises are permitted to participate in the Expression of Interest, the petitioners, who are private entrepreneurs have questioned the tender notice on the following grounds:-
 - (a) There is violation of level playing field as the petitioners, who are Contractors in same field are rendering similar services/work are unreasonably

excluded, thereby creating monopoly in favour of the Central Public Sector Undertaking/Enterprises which has resulted into unhealthy competition.

5. In support of the aforesaid contentions, reliance is placed on the judgment of the Apex Court in the matter of *Reliance Energy Ltd. and another Vs. Maharashtra State Road Development Corpn. Ltd. and another*, reported in (2007) 8 SCC 1, particularly paras 36 to 39. He has also relied on the judgment of the Apex Court in the matter of Civil Appeal No.2845 of 2017 : *Coal India Limited and another Vs. Competition Commission of India and another* decided on 15th June, 2023, particularly paragraph 43 to 48.

6. The Counsel for the petitioners would urge that the aforesaid act of the respondents is virtually creating monopoly in favour of the Government Institutions such as PSU Enterprises or Undertakings. It is claimed that such an act on the part of the respondents eliminates the healthy competition and as such, the same is not permissible in law.

7. As against above, the Additional Government Pleader Ms. Mehta would urge that it is not open for the petitioners to question the tender conditions, as tender conditions cannot be dictated by the parties like petitioners. According to her, from perusal of the tender document, it is apparent that the State Government intend to have participation of Central Public Sector Undertaking/Enterprises for the purpose of giving effect to the contract in question. She would claim that there are reasons behind such decision taken by the Government to incorporate the tender conditions. It is not open for the petitioners either to question tender conditions or direct the tender conditions to be moulded to their benefits. She has drawn support from the judgment of the Apex Court in the matter of *Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another* reported in (2016) 16 SCC 818.

8. We have considered the rival submissions.

9. The petitioners before us in the petition are the individual private Contractors, who are claiming to be working in the field of Mechanized Cleaning Services.

10. The fact remains that by virtue of tender condition, viz., restricting the participation in the tender process by only Central Public Sector Undertaking/Enterprises, same has eliminated the candidature of the private individuals like petitioners.

11. Such elimination by the respondents is based on tender condition. The respondent/tendering authority are the best judge in the matter of framing tender condition. It must be matter of convenience for the respondents to deal with a single contractor in the matter of execution of the work in question which involved substantial man-power.

12. As far as the claim put forth by the petitioners about violations of Doctrine of “level playing field” is concerned, it cannot be said that the petitioners claim to be at par with such Public Sector Undertaking/Enterprises and their claim was eliminated by the respondents by creating monopoly in favour of such Enterprises/Undertaking. As such, the reliance placed by the petitioners on the judgment of the Apex in the matter of *Reliance Energy Ltd. and another* (supra) cannot be of assistance in the matter.

13. Apart from above, the fact remains that the perusal of tender conditions does not reflect that the respondents have an intention to create monopoly in favour of a particular party. The class of parties, who are permitted in the tender process are specifically qualified in the tender document. Such parties are in the form of either Central Public Sector Undertakings/Enterprises. As such, amongst such Public Sector Undertaking or Enterprises, there will be a healthy competition as to whether the work in question, if they intend to be allotted which need to quote competitive prices.

As such, it cannot be said that the tender condition creates monopoly in favour of the Central Public Sector Undertakings or Enterprises.

14. This takes to next submission of the learned Additional Government Pleader Ms. Mehta. According to her, it is not open for the petitioners to question the tender condition, as the tendering authority is the best judge of the tender conditions.

15. We are in agreement with the aforesaid submissions, as prima facie the Apex Court has already held that the tender conditions are not open for the challenge on the ground of arbitrariness particularly, when there exists other parties to satisfies such tender conditions.

16. Rightly so the reliance can be placed on the judgment of the Apex Court in *Afcons Infrastructure Limited (supra)*, particularly para 15.

17. That being so, we see no reason to cause interference. As such, the petition lacks of merits and the same is dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Ambulkar