



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3211 OF 2024

Mr. Rohit s/o. Anand Meshram..Vs.. Executive Engineer, VIDC, Gosikhurd 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. K. Deogade, Advocate for petitioner,
Mr. U.A. Gosavi, Advocate for respondent No. 1,
Mr. S.S. Aadhau, Advocate for respondent No. 2.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 15-07-2024

Heard.

2. The respondent No.1 floated a tender for construction of earthwork on the condition of deposit of Earnest Money Deposit (EMD), which reads thus:

*“vi. Scanned copy of payment of EMD.
(contractor submit the scan copy of bank
statement showing EMD payment made)”*

The petitioner in response to the aforesaid condition had furnished a Bank statement, thereby depicting that the EMD of Rs.64,000/- and tender fees of Rs.2360/- i.e. total Rs.66,360/- were paid by the petitioner.

3. It is not in dispute that the said amount is received by the respondent Corporation as against the tender in question.

4. Mr. Deogade, the learned Counsel for the petitioner, submits that what was contemplated under

the tender condition is furnishing of a scanned copy of payment of EMD and what is stated in the bracketed portion in the tender condition No.(vi) is scanned copy of Bank statement showing EMD payment. As such, contentions of the learned Counsel for petitioner are that the petitioner has already satisfied the very object with which condition is incorporated as he has deposited the amount with nationalized Bank and the Bank statement was very much produced on record justifying the payment of EMD and tender fees.

5. As against above, Mr. Gosavi the learned Counsel appearing for the respondent No.1, submits that the condition with regard to payment of EMD by producing the Bank statement is mandatory in nature. According to him, the petitioner should have produced on record his account statement showing payment of the amount so as to avoid further complications as there might be submission of tender by petitioner by proxy by taking money from some other Contractor to overcome the competition.

6. We have appreciated the rival claims.

7. Perusal of the tender condition, which deals with payment of EMD, speaks of the scanned copy of payment by EMD. It is further mentioned in the bracketed portion subsequent to aforesaid that the copy of Bank statement should be produced on record. As such, what is produced on record by the petitioner is Bank response and payment details, which, in our opinion, cover the

very tender condition incorporated by the respondent No.1.

8. The fact remains that the respondent No.1 is not disputing the payment of the amount i.e tender fee and EMD. It is also not a case of the respondent No.1 that the petitioner has indulged into syndicating or has submitted the tender by proxy. As such, objection raised by the learned counsel for the respondent No.1 stands overruled.

9. In the aforesaid background, we hold that the petitioner has satisfied the condition No.(vi) about production of the Bank statement about payment of EMD. In that view of the matter, the decision of the respondent No.1 of rejecting the tender of the petitioner based on the aforesaid reason is not sustainable and as such, the same is quashed and set aside. We direct that the tender of the petitioner be processed as per the tender conditions.

10. The petition stands partly allowed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede