



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

WRIT PETITION NO.5760 OF 2024

Vaidya Industries, through its Proprietor Mr.Vivek Vinayak Vaidya Vs. State 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 order

Mrs. M.N.Hiwase, Advocate for petitioner.
Mr. D.V. Chauhan, Senior Advocate/Government Pleader assisted by
Mr. H.D. Marathe, AGP for respondent no.1 and 2.

CORAM : NITIN W. SAMBRE & MRS. VRUSHALI V. JOSHI, JJ.
DATE : OCTOBER 16, 2024.

Per NITIN W.SAMBRE, J.

1. Heard Mrs.Hiwase, learned counsel appearing for the petitioner and Mr. Chauhan, learned Government Pleader appearing for the respondent nos.1 and 2.

2. Heard finally by consent.

3. The prayer in the petition is for setting aside the order dated 23rd September, 2024 passed by the respondent no.2, whereby the petitioner's tender came to be disqualified for non-fulfillment of the terms of the tender in question.

4. The facts necessary for deciding the petition are as under:

The respondent no.2 floated a tender for construction of Pre Fab Structures for main building of 29 Primary Health Centres at Akola and Nagpur Circles. The total bid value is Rs.33,87,77,130/-.

The petitioner has submitted its tender pursuant to the programme given in the Tender Notice.

5. Since the petitioner's tender was not satisfying the requisite conditions viz. in the technical bid was containing in envelop no.1 (whereas the financial bid was containing in envelop no.2), the petitioner was served communication dated 21st August, 2024 by the respondent no.2, thereby informing shortfalls, calling upon the petitioner to satisfy the same. The said shortfalls were as under:-

- "1. Please Submit Original copy of Solvency Certificate which is attached in envelop no.1.*
- 2. Please submit the information regarding pending any litigations of your company in last 5 yrs.*
- 3. Please submit the supporting documents of the OEM/Sole Importer for Automated fire extinguisher company when authorization where is attached in envelop no.1.*
- 4. Please submit as per condition technical person's information as mentioned in DTP.*
 - a. Project Manager-BE Civil & above with 10 yrs. Experience.*
- 5. Please submit Net worth Certificate as bidder have positive financial status".*

6. The petitioner, in compliance with the same, has submitted its explanation along with documents.

7. In spite of chance being given to the petitioner, the petitioner has failed to satisfy the shortfalls, and therefore, the Tender Committee has disqualified the petitioner.

8. Ms. Hiwase, learned counsel for the petitioner, would invite the attention of this Court to the nature of the work, which was tendered through the tender document. According to the learned counsel, the petitioner was required to produce the Make in India Certificate declaration in compliance with clause 1.4.25, the authorization letter

along with bid ID in the name of tender inviting authority from Original Equipment Manufacturer/Sole Importer for Automated Fire Extinguisher under clause 1.4.26 and the information in regard to the litigation, as sought under clause 1.4.34. According to learned counsel, the requisite information required on the aforesaid clause nos.1.4.25, 1.4.26 and 1.4.34 was very much submitted. It is claimed that though there is a little delay in submitting litigation status certificate, which is produced along with the rejoinder during the course of hearing, the same cannot be termed as mandatory tender condition. In such an eventuality of non-compliance of the said condition, the petitioner ought not have been disqualified. Her further contentions are that the petitioner has produced a certificate from the authorized dealer of the Original Equipment Manufacturer. According to her, not the original equipment manufacturer but the authorized dealer has issued authorization certificate in favour of the petitioner and as such it has to be inferred that there is sufficient compliance. In such an eventuality, it is claimed that the order of disqualification of the petitioner cannot be said to be sustainable.

9. As against above, the learned Government Pleader appearing for the respondent nos.1 and 2 would oppose the prayer, as according to him, the Tendering Authority is the best judge in the matter of interpreting the tender conditions and the compliance of mandatory conditions. It is claimed that admittedly the litigation certificate is not produced along with tender document and even subsequent thereto,

though an opportunity was offered to the petitioner, the same was not produced. He would further urge that the certificate issued by the original equipment manufacturer is not in favour of the petitioner but the certificate speaks of an authorization issued by the authorized dealer in favour of the petitioner and as such it cannot be said that the tender conditions are complied with.

10. Drawing support from the judgment of the Apex Court in the matter of ***Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J.K. Roadways, Fleet Owners And Transport Contractors and others reported in (2021) 16 SCC 808***, it is claimed that the tendering authorities is the best judge as to the interpretation of the tender conditions.

According to the learned Government Pleader, once the tendering authority has inferred that there is non-compliance of the mandatory tender conditions, it is not open for this Court under Article 226 of the Constitution of India to substitute its decision. As such, it is claimed that the petition is liable to be dismissed.

11. We have appreciated the said submissions.

12. The fact remains that the work in question is in relation to the construction of Pre Fab Structures for main building of 29 Primary Health Centres in Nagpur and Akola Public Health Circles. The envelop no.1 along with tender document was required to contain all the necessary requirements amongst others, the requirements as contemplated under clause nos.1.4.25, 1.4.26 and 1.4.34, reads thus:

"1.4.25 Bid participant of the bid have to submit their Make in India Certificate declaration.

1.4.26 The bidder must submit the authorization letter along with bid ID in the name of tender inviting authority form OEM/Sole Importer for Automated Fire Extinguisher.

1.4.34 Information regarding any litigation, current or during last five years, in which the bidder is involved, a parties concerned and disputed amount (Information to be given in the form No.VI)".

13. As far as the condition no.1.4.34 is concerned, the fact remains that legal proceedings at the behest of the petitioner in the Jharkhand High Court in relation to some tender matter are informed to be pending. Said fact was not brought to the notice of the tendering authority along with tender document. It is only, by way of an additional affidavit to this petition, such fact is sought to be placed before this Court so as to bring it to the notice of the tendering authority.

14. When the petitioner was given an opportunity by the tendering authority to place the relevant document on record, the fact about pendency of the petition before the Jharkhand High Court on the date of such communication viz. dated 21st August, 2024 was very much in existence, one fails to understand what prompted the petitioner not to supply such information or why such information was concealed from the tendering authority.

15. As such, rightly so pointed out that the tendering authority was justified in inferring that the petitioner has failed to comply with the tender condition referred above viz.clause 1.4.34.

16. In support of above, rightly reliance is placed on the judgment of the Apex Court in the matter of **Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers** (cited supra). Para 16 of the said judgment reads thus:

“16. Further, in the recent judgment in Silppi Constructions Contractors V. Union of India (2020) 16 SCC 489, this Court held as follows: (SCC pp 502-503, para 20.)

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court’s interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

17. Apart from above, it was necessary for the petitioner to produce on record the authorization letter from the Original Equipment Manufacturer. In the case in hand, the original equipment manufacturer is shown to be one “SAFE PRO FIRE SERVICES PVT. LTD”. The said Safe Pro Fire Services Pvt. Ltd. has issued a certificate of authorization on 13th August, 2024, thereby certifying that the Safe Pro Fire Services Pvt. Ltd. has appointed MANOPUSHP as an authorized dealer by the said

original equipment manufacturer. The said authorized dealer has further issued authorization in favour of the present petitioner.

18. As such, once such authorization are part of the tender document produced by the petitioner, it cannot be said by taking an hyper technical view that the petitioner has failed to satisfy the requirement under clause 1.4.26 of not producing Authorization from Original Equipment Manufacturer.

19. As such, the decision of the respondent to the extent of recording reasons that the petitioner has failed to satisfy the compliance of condition no.1.4.26 cannot be accepted. As such it has to be held that the petitioner has complied with the said condition, as the authorization issued by the authorized dealer based on the initial authorization issued by the original equipment manufacturer, which documents are part of the tender document.

20. However, we are of the view that the condition no.1.4.34 of the tender document viz. failure to give the litigation details is one of the mandatory tender condition which the petitioner has failed to comply with. In such an eventuality, we see no reason to cause interference in the decision of the respondent in disqualifying the petitioner.

21. The petition fails and stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)