

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16615 OF 2024

WITH

INTERIM APPLICATION NO. 15238 OF 2024

(For Stay)

Virani Estate Corporation

....*Petitioner*

: *Versus* :

Maharashtra State Road Transport
Corporation and Ors.

....*Respondents*

Ms. Ruchi Gupta (Through VC) with Ms. Vasundhara Chandwani,
for Petitioner

Mr. Nitesh Bhutekar, for Respondent No. 1

Mr. D.D. Rananaware, for Respondent No. 3

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

DATED : 7 JULY 2025.

P.C. : (Per Sandeep V. Marne, J.)

1) By this petition, Petitioner challenges the tender process implemented by Respondent-Maharashtra State Road Transport Corporation (MSRTC) for supply of gear and gear parts for its vehicles.

Petitioner has also challenged the work order/rate contract issued in favour of Respondent No.3.

2) Brief facts leading to filing of the present petition are that Respondent No.1-MSRTC floated tender for supply of gear and gear parts for TATA, Leyland and Eicher Vehicles. Petitioner claims to be sole selling agent/authorized seller of Sadhu Forging Ltd. and submitted its bid in pursuance of the impugned tender. Petitioner claims that it was the lowest bidder. Respondent No.3 did not bid in pursuance of the tender notice. It is the complaint of the Petitioner that the General Manager of MSRTC (S & P) vide letter dated 29 July 2024 approached Respondent No.3 for supply of 44 parts and thereafter proceeded to award Rate Contract No. 79 of 2024-2025 dated 8/30 October 2024 to Respondent No.3 for 38 items. Similarly, separate Rate Contract No. 77 of 2024-2025 dated 21/30 October 2024 was awarded to Respondent No.4 in respect of 14 items. Petitioner has been awarded Rate Contract No. 78 of 2024-2025 dated 11/14 November 2024 for 20 items. Petitioner has filed the present petition highlighting the alleged illegalities in the impugned tender process especially the award of rate contract to Respondent No.3 who had not participated in the tender process.

3) Ms. Gupta, the learned counsel appearing for the Petitioner would submit that MSRTC being a Government Body, cannot arbitrarily award the rate contract to Respondent No.3 who did not participate in the tender process. That the letter awarding rate contract to Respondent No.3 makes reference to the impugned tender notice dated 16 May 2024 thereby establishing connection between the award of rate contract and the tender process. That the so called rate contract between Respondent No.3 and Association of State Road Transport Undertakings (**ASRTU**) was executed on 5 February 2024 and the same had no relevance to the

implementation of the impugned tender process. That merely because Respondent No.3 has a contract with ASRTU, the same cannot be a reason for awarding rate contract to it in absence of participation in the tender process. That the rate contract ought to have been awarded only to bidders who had participated in the tender process. Mere reluctance on the part of the bidders not to match the rates expected by MSRTC could not have been a ground for awarding rate contract to an entity who had not even participated in the rate contract.

4) The petition is opposed by Mr. Bhutekar, the learned counsel appearing for Respondent No.3 submitting that the petition has been rendered infructuous as fresh Tender Notice No.1 of 2025-2026 is now issued by MSRTC in which the Petitioner can participate. Without prejudice, he would submit that the MSRTC is justified in awarding contract to Respondent No.3 who was willing to supply parts as per the rates prescribed by ASRTU. That there is vast difference between the rates quoted by Petitioner and ASRTU rates and if the contract was to be awarded to the Petitioner, the same would have caused huge financial loss to MSRTC. That Petitioner and other bidders were called upon to match ASRTU rates which they refused to match, leaving no option to MSRTC but to award rate contract to Respondent No.3 who was willing to supply the parts as per ASRTU's rates. He would accordingly pray for dismissal of the petition.

5) Rival contentions of the parties now fall for our consideration.

6) The short issue that arises for consideration in the present petition is whether the tendering authority and MSRTC were justified in awarding the contract to an entity who had not even participated in the tender process. The obvious answer to the question is in the

emphatic negative. Once MSRTC implemented tender process, award of contract must be in favour of entity who has participated in the tender process. Respondent No.3, who never submitted its bid in pursuance of tender notice could not have been awarded the rate contract. Mere refusal on the part of bidders to match ASRTU'S rates could not have been a reason enough for MSRTC to award rate contract to Respondent No.3. If the bidders were not willing to match ASRTU's rates, MSRTC ought to have issued fresh tender rather than awarding the contract to an entity which was foreign to the tender process.

7) We are not impressed by the justification offered on behalf of MSRTC of vast difference between the rates quoted by the Petitioner and ASRTU's rates. As observed above, if MSRTC was unable to find a bidder quoting the rates expected by it, it ought to have cancelled the tender process and issued a fresh tender process. Merely because the Petitioner was found to be eligible, the same did not confer any vested right on it to secure rate contract. The tendering authority has full discretion to cancel the tender process and go for fresh bid in the event it is found that the lowest rate quoted by the bidder is above the expectation of the tendering authority. It may be that MSRTC wants to procure parts at the rates prescribed by ASRTU. However, MSRTC apparently did not incorporate a condition of non-quoting of rates beyond ASRTU's rates in the impugned tender notice. It could have done so in the fresh tender process rather than awarding contract to Respondent No.3.

8) Mere execution of contract between ASRTU and Respondent No.3 can also not be a justification for awarding contract to Respondent No.3. If the rate contract was to be awarded only to ASRTU contractors, there was no necessity for MSRTC to implement the impugned tender process. Once tender process is implemented and

bids are invited, contract must be awarded only to one of the bidders and the same cannot be awarded to an entity who has not participated in the tender process. Merely because fresh tender process is being implemented in September 2025, the same again cannot be a reason for retaining illegal award of rate contract of Respondent No.3.

9) We accordingly find the action of MSRTC in awarding the rate contract to entities not participating in the tender process to be unsustainable. We accordingly proceed to pass the following order :

- (i) Rate Contract No. 79 of 2024-2025 awarded to Respondent No.3 vide letter dated 08/30 October 2024 is set aside.
- (ii) MSRTC shall invite fresh tender for supply of parts allotted to Respondent No.3 vide letter dated 8/30 October 2024 for remainder of the contract period.
- (iii) However, the order shall not affect award of rate contract to the Petitioner and Respondent No.4 already made.

10) With the above directions the, Writ Petition is **disposed of**. With disposal of the petition, Interim Application taken out for stay does not survive and the same also stands disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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