

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

WRIT PETITION NO. 704 OF 2024

Consortium of Nair Coal Services Pvt. Ltd.
And Azay Tradionics LLP represented by
its authorized signatory

... Petitioner

V/s.

Maharashtra State Power Generation
Company and Ors.

... Respondents

Mr. Saurish Shetye with Mr. Shubham Mishra i/b. Mr. Shah and Furia Associates for the Petitioner

Dr. Birendra Saraf, Advocate General with Mr. Akshay S. Karlekar for Respondent No.1 – MSPGC

Mr. Tejas Gupta with Ms. Nikita Bhansali and Ms. Roshni Bhati i/b. Yasmin Bhansali & Co. for Respondent No. 2

Ms. Saloni Manjrekar i/b. HN Legal for Respondent No.3

**CORAM : ALOK ARADHE, CJ. AND
M.S. KARNIK, J.**

DATE : 16th APRIL 2025

ORDER (Per Chief Justice) :

1. Rule. Rule is made returnable forthwith. By consent of the parties, the matter is heard finally.

2. In this Writ Petition, the Petitioner has assailed the validity of the action of Respondents rejecting the technical bid of the Petitioner. The

Petitioner also seeks to quash and set aside the impugned letters of Award dated 31st January 2024 issued by the Maharashtra State Power Generation Company (MSPGC), in favour of Respondent Nos. 2 and 3 respectively. In order to appreciate the grievance of the Petitioner, the relevant facts need mention, which are stated infra.

3. The tender was floated by the MSPGC on 10th November 2023 inviting bids for the supervision of coal rake movements, coal quantity and quality monitoring, loading of quality coal and movement of sized coal. The Petitioner deposited the requisite earnest money on 13th December 2023. The Petitioner submitted the bid on 20th December 2023 along with work completion/experience certificates issued by Gujarat State Electricity Corporation Limited and Andhra Pradesh Power Generation Corporation Limited and Maharashtra State Power Generation Company Limited. The Respondent No.1 – MSPGC, on 26th December 2023, opened the technical bids for scrutiny. The Petitioner, by a communication dated 23rd January 2024 was informed that its technical bid had been rejected. The Petitioner thereupon sent an e-mail on 23rd January 2024 itself and demanded to know the reasons for rejection of its technical bid. The Petitioner thereupon, by a communication dated 24th January 2024 was informed that the technical bid of the Petitioner has been rejected as the Petitioner has failed to satisfy the eligibility criteria. The Respondent No.1 – MSPGC, on 31 January 2024

issued letters of Award granting contract in favour of Respondent Nos. 2 and

3. In the aforesaid factual background, the Petition has been filed seeking the relief *supra*.

4. The learned Counsel for the Petitioner submitted that the Petitioner has more experience of coal supply through road-cum-rail mode and therefore, the technical bid ought not to have been rejected. It is further submitted that the mode of coal transportation, whether road-cum-rail or exclusively by rail, does not diminish or alter the quantum of coal supervised and monitored under its experience and therefore, the technical bid of the Petitioner has been rejected on the untenable grounds.

5. On the other hand, the learned Advocate General appearing for Respondent No.1 while inviting the attention of this Court on the eligibility requirement contained in the tender document submitted that the Petitioner did not have experience of supervising of coal supply through road-cum-rail mode only, therefore, the technical bid of the Petitioner has rightly been rejected on the touchstone of the qualifying criteria prescribed in the tender document. It is submitted that the MSPGC being author of the tender document, is the best person to understand and appreciate its requirements. It is submitted that the action of MSPGC is neither arbitrary nor irrational and therefore, the same does not warrant interference in exercise of power of judicial review.

6. We have considered the rival submissions and have perused the record.

7. It is trite law that the employer of the project who authored the tender documents is the best person to understand and appreciate its requirements and interpret its documents. It is equally well settled legal proposition that the authority inviting the tenders may have given an interpretation to the tender document which may not be acceptable to the Constitutional Courts but that by itself is not a reason for interference with the interpretation put forth by the authority. (See *Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd.*¹ and *Montecarlo Ltd. vs. NTPC*²).

8. In the backdrop of the aforesaid well settled legal proposition, we may advert to the eligibility criteria in the tender document which reads as under :-

“(1) Qualifying Requirements :

1) The bidder should have experience of having successfully completed similar works during the last nine years ending last day of month previous to the one in which applications are invited should be either of the following :

*(a) Three similar completed works, **each** costing not less than the amount equal to **40%** of the estimated cost of Group A i.e. Rs.59.33 Crores.*

*(b) Two similar completed works, **each** costing not less than the amount equal to **50%** of the estimated cost of Group A i.e.*

1 (2016) 16 SCC 818

2 (2016) 15 SCC 272

Rs.59.33 Crores.

*(c) One similar completed work, no less than the amount equal to **80%** of the estimated cost of Group A i.e. Rs.59.33 Crores.*

The bidder must produce copies of work orders certificates of work completion/experience certificate of actual works executed from coal companies or public utilities in this regard failing which the offer will not be considered.

*Similar works means, **exclusively** work experience of supervision, monitoring and coordination with CIL subsidiaries, SCCL and railways for coal quality and quantity realization for supply of coal through rail mode only, for any State Electricity Boards or PSU or Central/State Power Generating Company, Independent Power Producers (IPP) having generating capacity not less than 500 MW.”*

2) Further in Clause IV, it is clarified as under :

“Note : (i) The above qualifying requirements and points are to be read in totality and not in isolation.

(ii) Mahagenco reserve the right to seek any additional information as it may deem to satisfy itself of the eligibility and past performance of the bidder.

(iii) In this context the bidder has to submit the undertaking as Annexures along with bid document as per the format enclosed.

(iv) Work experience of Washery, Imported Coal, RSR & RcR shall not be considered for this tender.”

9. Thus, from the perusal of the aforesaid essential eligibility criteria, it is evident that the tenderer must have the experience of supervision in coal supply through rail mode only and the work experience of RcR shall not be considered for the purposes of the tender.

10. In the instant case, admittedly, the Petitioner does not have the experience of supervision for supply of coal through rail mode but have experience in coal supply through road-cum-rail mode only.

11. Thus, the Petitioner does not fulfill the aforesaid eligibility criteria laid down in the notice inviting tender. The decision of MSPGC is not assailed before us on the ground that the same is *malafide* or suffers from perversity. It is also pertinent to note that the Petitioner has not assailed the validity of the eligibility criteria laid down in this Writ Petition.

12. For the aforementioned reasons, no case for interference with the impugned decision of the MSPGC in exercise of powers of judicial review is made out.

13. In the result, the Writ Petition is dismissed.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)

JYOTI
PRAKASH
PAWAR

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by JYOTI
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