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

WRIT PETITION NO. 1035/2025

(SAMAR STEEL INDUSTRIES, JALGAON **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri D.P. Palodkar, Advocate Shri Vinay Dahat, counsel for the petitioner.
Shri D.V. Chauhan, Senior Counsel and Government Pleader with Shri N.S. Rao, Assistant Government Pleader for the respondent nos.1 to 3.
Mrs. P.V. Ganediwala, counsel for the respondent no.4

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : APRIL 05, 2025

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Heard finally with consent of the respective counsel for the parties.

2. The petitioner has prayed for quashing and setting aside of E-bid reference no.GMC/Chandrapur/Mobiliary Infra/325/2025, dated January 20, 2025. The petitioner has further prayed that the aforesaid tender work be re-tendered by carrying out necessary changes in the tender conditions as per the directives of the State and/or Central Government which were brought to the notice of the Tendering Authority through the communication dated January 28, 2025 before the pre-bid meeting.

3. The facts necessary for deciding the writ petition are as under :-

The petitioner, a partnership firm, is in the manufacturing and supply of various kinds of furniture items and is registered as Micro, Small and Medium Enterprise. The Udyam registration certificate issued by the Ministry of Micro, Small and Medium Enterprises is sought to be relied on by producing the same at Annexure-A. The respondent no.1-State Government, the respondent no.2-Commissioner of Medical Education and Research and the respondent no.3-Dean, Government Medical College, Chandrapur caused a tender notice calling bid for establishment of Mobiliary Infra for Government Medical College, Chandrapur, Maharashtra. The tender conditions demonstrate Dean, Government Medical College, Chandrapur as a purchaser at an estimated cost of Rupees Fifty Four Crores. The bid fee is prescribed at Rupees One Lakh whereas the Earnest Money Deposit was shown as Rupees One Crore Ten Lakhs. It further provides for the testing charges of Rupees Two Lakhs Fifty Thousand. The Bid Schedule for submitting tender is as under :-

"BID SCHEDULE

1	*Date of commencement of sale of Bid document/Download*	*23/01/2025 at 02.00 PM*
2	*Date of pre-bid meeting*	*29/01/2025 at 12.00 PM*
3	*Last date for sale of bid document*	*12/02/2025 at 05.00 PM*
4	*Bid preparation Period*	*23/01/2025 to 13/02/2025 at 5.00 PM*
5	*Closing of Bid (By Department)*	*13/02/2025 at 05.00 PM*
6	*Last date and time for submission of Bid*	*13/02/2025 at 05.00 PM*
7	*Date and time of opening of Envelope No.1*	*14/02/2025 at 05.00 PM*

A complete set of bid documents may be purchased by interested eligible bidder upon online payment of a non-refundable fee mentioned as above. Bidder has to make the online payment of bid fees as per in the time schedule of e-bid procedure."

4. It is the case of the petitioner that pursuant to the tender document and the policy of the Government, it is entitled for exemption not only from the payment of bid purchase money of Rupees One Lakh but also that of the Earnest Money Deposit of Rupees One Crore Ten Lakhs. Since the attempt made by the petitioner for submitting the tender was not honoured so also his request for participation in the pre-bid meeting was not acceded to, the petitioner felt aggrieved and has questioned the award of work in favour of the respondent no.4, which is a successful bidder.

5. Shri D.P. Palodkar, counsel appearing for the petitioner would invite our attention to the clause pertaining to bid fee of Rupees One Lakh and Earnest Money Deposit of Rupees One Crore Ten Lakhs. According to him, though Clause 1.6 of the Terms and Conditions contemplates the bidder to submit non-refundable bid fee of Rupees One Lakh through online E-Bidding portal, non-submission of which results into rejection of the bid summarily. According to him, the requirement of the Earnest Money Deposit of Rupees One Crore Ten Lakhs is onerous and in any case, pursuant to Clause 1.10 of the Terms and Conditions since Government Resolutions dated December 01, 2016 and July 27, 2017 are applicable, the petitioner is not only exempted from payment of bid purchase money but also the Earnest Money Deposit. So as to substantiate his contentions, he would claim that the reliance can be placed on Schedule 8 of the Government Resolution dated December 01 2016 which is produced

by the respondents alongwith their reply at Annexure R-1. According to him, it is the policy of the State Government that the manufacturer who is registered under the MSME Act, 2006 are exempted from payment of bid money and also the Earnest Money Deposit. It is claimed that inspite of above, the tender of the petitioner was neither accepted nor it is granted exemption from deposit of bid money and the Earnest Money Deposit. He would claim that Clause 3 of the Tender Conditions prescribed for pre-bid meeting, which as per the bid schedule, was on January 29, 2025. By inviting our attention to the emails sent by the petitioner on January 28, 2025 and February 12, 2025, it is claimed that even the petitioner's suggestion in the pre-bid meeting that the petitioner intends to participate therein as per Clauses 3.1 and 3.2 was not honoured. According to him, the tender procedure contemplates downloading of the tender free of cost. However, the window which should have been open to MSME registered entrepreneurs for submission of tender without Earnest Money Deposit and payment of bid money were never opened. So as to substantiate such contention, the counsel for the petitioner has invited our attention to the screen shots of the attempts of the online payment made by the petitioner. It is claimed that on February 12, 2025, the aforesaid fact was brought to the notice of the respondents. Based on these two issues, it is his contention that the entire conduct of the respondents is with an intention to favour a particular agency so as to award the work in their favour. By inviting our attention to

Clause 2 Condition nos.8, 9, 10 and 11, it is urged that since in case of a trader, the turnover average for last three years was expected to be Rupees Fifty Crores whereas in case of a manufacturer like the petitioner same has to be Rupees One Hundred Crores, the said condition is onerous and discriminatory in nature. He would claim that every bidder purchases his commodity to carry out trade from the manufacturer. In such an eventuality, what is purchased by the trader from the manufacturer is passed on to the ultimate consumer and therefore the discrimination between the category of trader and manufacturer is illegal and unwarranted. In this background, it is claimed that the conditions which are framed by the respondents are tailor-made and suiting a particular agency or candidate. As such the entire tender process needs to be cancelled thereby recalling the tender.

The counsel for the petitioner has relied on paragraphs 10, 31, 32 and 38 of the latest judgment of the Apex Court in *Lifecare Innovations Pvt.Ltd. & Another Versus Union of India & Others* [**2025 SC OnLine SC 436**]. His contentions are that the condition of turnover saddled on the manufacturer like the petitioner is onerous and discriminatory and this Court in view of the above cannot be said to be handicapped in causing interference. He would also draw support from paragraphs 38, 40, 42 and 44 of the Apex Court judgment in *Association of Registration Plates Versus Union of India & Others* [**(2005) 1 SCC 679**].

6. As against above, Shri D.V. Chauhan, Government Pleader appearing for the respondent nos.1 to 3 and Mrs.P.V. Ganediwala, counsel appearing for the respondent no.4 would submit that the writ petition lacks merit and is liable to be dismissed as it was always open for the petitioner to submit the bid amount and the Earnest Money Deposit in view of the tender conditions and seek refund of the same in view of the policy of the Government. According to him, the claim of the petitioner that it had sent the E-mails before the pre-bid meeting on January 28, 2025 cannot be accepted as such mails were never received by the respondents. So as to substantiate the above contentions, the Government Pleader has invited our attention to the inward register of the respondents which reflected the E-mails which were received by the respondents before the pre-bid meeting. That being so, it is claimed that the writ petition involves not only disputed questions of facts but the petitioner has also failed to demonstrate that the E-mail dated January 28, 2025 was forwarded to the respondents. It is further urged by the counsel for the respondents that the petitioner cannot question the wisdom of the State Government in the matter of commercial interest where the State Government intended to enter into a contract. According to them, in view of the Government Resolution dated December 01, 2016 not only the tender document was permitted to be offloaded without consideration but the petitioner on its own has claimed that it has downloaded the said documents and tried to submit the same. It is the contention of the

respondents that it is only upon the verification of the MSME certificate that the petitioner's bid money and Earnest Money Deposit could have been refunded.

7. It is claimed that this Court must take a holistic approach of the conduct of the respondent nos.1 to 3 so as to appreciate the mode and manner in which the tender was processed resulting into the respondent no.4 being declared as L1. According to the Government Pleader, even if what has been stated by the petitioner is accepted on its face value, still it cannot qualify the tender conditions which are prescribed for the traders i.e. turnover of Rupees Fifty Crores. The learned Government Pleader would further urge that the judicial review of the tender conditions is not permissible and would sought to rely on the Division Bench judgment of this Court delivered on October 16, 2024 in **Writ Petition No.6193 of 2024** [*Aspen System and Software, Amravati Versus State of Maharashtra & Others*]. According to him, as regards the issue of the judicial review of the tender conditions, the Apex Court has settled the said issue by its judgment in *Subodh Kumar Singh Rathour Versus The Chief Executive Officer & Others* [**(2024) 7 SCR 532**]. By urging that the judicial review of the contractual matter is permissible only on a very limited ground, he has sought to rely on the judgment of the Apex Court in *Airport Authority Versus Center of Aviation* [**AIR 2022 SC 4749**]. He would claim that in *Jagdish Mandal Versus State of Orissa &*

Others [**(2007) 14 SCC 517**], the Apex Court has held that the High Court cannot sit in an appeal over the technical assessment carried out by the Bid Committee. That being so, the dismissal of the writ petition is sought.

8. We have considered the rival claims.

9. After delving on all the issues, since both the parties agree that this Court can first look into the issue of satisfaction of the condition *qua* the turnover, we are required to have regard to Conditions 8, 9 and 10 of Clause 2 of the Terms and Conditions which read thus :-

> "*8. The Bidder minimum Average Turnover during past three years i.e. F.Y. 2021-22, 2022-23 & 2023-24 shall be Rs.50 Crores. Copies of Balance Sheet and Profit-loss statement and CA Certificate of last three years annual Turnover with UDIN Number.*
> *9. The Bidder/Manufacture/OEM Minimum Average Turnover during pass three years i.e. F.Y. 2021-22, 2022-23 & 2023-24 shall be equal to or more than Rs.100 Crores. Copies of Balance Sheet and Profit-loss statement and CA Certificate of last three years annual Turnover with UDIN Number.*
> *10. Copies of last 3 years Income Tax Clearance/ITR's of F.Y. 2021-22, 2022-23 & 2023-24.*"

Condition 8 postulates that minimum turnover for last three financial years i.e. 2021-2024 is required to be Rupees Fifty Crores whereas same is Rupees Hundred Crores in case of a bidder being a manufacturer.

10. The aforesaid condition appears to be mandatory in nature. Our attention is invited to the turnover certificate of the petitioner which in fact depicts that the petitioner who falls in the manufacturer category does not even posses the qualified turnover prescribed for trader category. In our opinion, in view of the law laid down by the Apex Court in *Subodh Kumar Singh Rathour* and *Jagdish Mandal* (supra), the judicial review of the mandatory tender conditions is not permissible. The fact remains that since the petitioner has not satisfied even the lowest category viz. prescribed qualified turnover for trader, leave apart the manufacturer, the petitioner is even otherwise not qualified.

11. In that view of the matter, it cannot be held that the tender condition as regards turnover was discriminatory. Apart from above, it has to be noticed that when the petitioner had submitted its claim towards pre-bid meeting by drawing support from the copy of the email, that by itself will not lead to drawing of an inference that such mail was received by the respondents for the reason that the respondents have produced on record the extract relating to the E-mails received by them before the pre-bid meeting. The said respondent which is a public authority has demonstrated from the record that all the mails received during the said period i.e. January 28, 2025 include the mails sent by other bidders in relation to the pre-bid meeting which were acknowledged by the respondents and has facilitated such bidders to participate in the pre-bid meeting.

That being so, it has to be inferred that leave apart the issue of *mala fides* but even otherwise, the petitioner is not in a position to demonstrate that it has seriously made efforts to participate in the tender in question.

12. For the reasons recorded hereinabove, in our opinion, no case for causing interference in extraordinary writ jurisdiction is made out. The writ petition accordingly fails and stands dismissed. In the facts of the case, there shall be no order as to costs.

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

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