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

WRIT PETITION NO. 6376 OF 2024
Super Electric & Company, a Registered Partnership Firm
Vs.
State of Maharashtra, Public Works Department through its Secretary and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. Atul Pande, Advocate for Petitioner
Mr. D.V. Chauhan, Government Pleader with Mr. A.A. Madiwale, AGP for Respondent nos. 1 to 3
Mr. M.V. Samarth, Senior Advocate with Mr. A.P. Tathod, Advocate for the Respondent No.4

CORAM: AVINASH G. GHAROTE AND ABHAY J. MANTRI, JJ.

DATED : 6th MARCH, 2025

1. Heard Mr. Pande, learned counsel for the petitioner, Mr. Chauhan, learned Government Pleader for the respondent Nos.1 to 3 and Mr. Samarth, learned Senior Counsel for the respondent No.4.

2. The petition questions the communication dated 10.10.2024 (page 190), issued by the respondent Nos.2 and 3, by which the petitioner was informed that his bid, for the work of providing electrical material (page 111) was rejected for the reason that the petitioner was found to be

disqualified as required documents were not submitted by him. Mr. Pande, learned counsel for the petitioner by inviting our attention to the Government Resolution dated 07.03.2019 (page 195), submits, that the very fact, the said Government Resolution grants permission to rectify the defect, indicates, that the certificate of registration, under Section 5(1) of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (page 180), submitted by the petitioner along with covering letter dated 16.08.2024 (page 198), satisfies the requirements as contained in that regard. He further invites our attention to the communication dated 14.08.2024 (page 177), to contend, that the requirement of the certificate under the aforesaid Act of 1975, was not a defect, communicated to the petitioner, on account of which, the rejection of the bid of the petitioner cannot be sustained. He further submits, that the shortfalls as indicated in the communication dated 14.8.2024, have been cleared by the petitioner, on account of which also the rejection of the bid cannot be sustained.

3. He further submits, that though the respondent No. 4, whose bid has been accepted, did not meet the requisite technical specifications as

indicated in the item list at page 111, item no. 22, the acceptance of his bid, was clearly a malafide act on the part of the respondent Nos. 1 to 3, who inspite of the fact that they knew that one Mr. Hemant Marathe was the Chartered Accountant of respondent No. 4 ventured to take an opinion from him in respect of the PTEC, which opinion is dated 16.09.2024 (page 232). He further submits, that the very fact, that inspite of the respondent No.4 not qualifying with the requirements as indicated in page 111, item no 22, which stood advocated by him by communication dated 09.10.2024 (page 300), his bid was accepted, which again points out the malafides on the part of the respondent Nos. 1 to 3, as a result of which, even if it is held that the petitioner was rightly disqualified, the respondent No. 4 could not have been held to be duly qualified and the work order dated 15.10.2024 (page 208) could not have been issued in his favour. He, therefore, submits, that entire conspectus would point out that the respondent Nos. 1 to 3 have acted in a manner to favour the respondent No. 4, on account of which, the entire action of awarding the contract to the respondent No. 4 stands vitiated, as a result of which, the work order needs to be quashed and set aside.

4. Mr. Chauhan, learned Government Pleader for the respondent Nos. 1 to 3, submits that though the list of defects dated 14.08.2024 (page 177) may not have indicated the absence of the PTEC has been one of the reasons, however, since it is a necessary requirement in terms of Clause 1.4.16 of the NIT (page 42), the non-submission of the same by the petitioner on the date of submission of the tender, has been considered to be a ground for disqualification of the bid of the petitioner, which cannot be faulted with. He further submits, that the allegations of malafides and favouratism levelled against the respondent Nos. 1 to 3, are without any merits, as the petitioner has to first stand on his own legs for the purpose of qualification and then make these allegations. Even otherwise, he submits, that the evaluation has been done on the merits of the matter and there is no malafide or favouratism.

5. Mr. Samarth, learned Senior Counsel for the respondent No. 4 adopts the arguments advanced on behalf of the respondent Nos. 1 to 3.

6. Clause 1.4.16 of the NIT requires a scanned from the original copy of the professional tax registration / professional tax enrollment certificate, the first relating to a proprietorship concern, the second to the partnership firm. The

requirement in this regard is to be tested in light of GR dated 07.3.2019. The GR dated 07.3.2019 (page 195), enjoins upon the authorities floating the tender, vide clause 2, to grant an opportunity to the bidder, to rectify minor defects. The opportunity to rectify minor defects cannot be held to mean modification of the tender condition in any manner whatsoever. In the instant case, the tender condition no. 1.4.16 (page 42) required the PTEC to be submitted by a bidder. Though this certificate has been submitted by the petitioner (page 180), a perusal of the same, indicates that it is w.e.f. 16.8.2024, which would indicate that as on the last date of the submission of the bid which was 07.8.2024, the petitioner was not having a registration as contemplated under clause 1.4.16 of the NIT. It is also necessary to consider why the GR dated 07.3.2019 considers the necessity of grant of an opportunity, which reason is spelt out, in clause 2 itself, that in number of cases, on account of the documents having already been verified, in respect of a successful tenderer, in an earlier tender by the same department or other government departments, merely on account of non-submission of the said document, the bidder should not be denied an opportunity. This would necessarily mean that in an earlier tender process the requirement, already stood satisfied by the bidder. The position in the instant matter is however to the contrary, for the reason that the petitioner became a partnership firm only on 14.2.2024 and was registered with the Registrar of Firms on 23.4.2024, on account of which, it could not be said that the intent and purpose of the aforesaid GR dated 07.3.2019 (page 195), could be said to be have been satisfied by the petitioner on account of the submission of the registration (page 180) in terms of clause 1.4.16 of the NIT which was w.e.f. 16.8.2024 when the last date of submission of the bid was 07.8.2024. Though it is contended by Mr. Pande, learned counsel for the petitioner, that the letter communicating the defects dated 14.8.2024 (page 177), did not indicate this defect and merely asked for the "copy of the registration as partnership deed and copy of PoA not found", however, the necessity to fulfill the requirement of the NIT is not disputed by Mr. Pande, learned counsel for the petitioner. That being the position, we do not find that the rejection of the bid of the petitioner by the impugned communication, can be said to be unjustified.

7. That takes us, to the contention by Mr. Pande, learned counsel for the petitioner regarding malafides and favouratism vis-a-vis the respondent

No.4. The persons against whom malafides are alleged have not been made parties in person, as the law requires. That apart the only ground, for these allegations are the opinion of Mr. Marathe, Chartered Accountant, vis-a-vis, the certificate of registration of the petitioner which opinion is dated 16.9.2024 (page 233), however, what we find is that even if this opinion is ignored, the certificate of registration by the petitioner (page 180) itself indicates, non-compliance with the requirement of clause 1.4.16 of the NIT.

8. The second ground for alleging malafide and favouratism is the communication by the respondent No.4, dated 09.10.2024 (page 300), which in reference to the NIT and the offer made by the respondent no.4, which states, that the product which is being offered by the respondent No. 4 was technically most sound and in case after issuing the work order, if the department insists for “Harman” or “Bosch” audio systems, an assurance was given to provide the same without any financial burden to the department. In this context, what is necessary to note is that the requirement of the systems as indicated in the list of the preferred electrical material for use on government installation (page 111), on which reliance is being placed by Mr.

Pande, learned counsel for the petitioner, in relation to item no. 22, reads as under :

22	P.A. System	Bosch, Electro-voicd, D & B or Equivalent make

9. A perusal of the above would indicate, that the aforesaid list is not a mandatory list, but the list of preferred electrical material. The use of the word “preferred” by itself would indicate absence of its mandatoriness. That apart, item no. 22 in relation to the make / brand name indicates that it could be Bosch, Electro-voicd, D & B, or equivalent make. The expression equivalent make would again indicate that the brands / make names indicated therein were not mandatory. We, therefore, do not find, any substance, in the allegations of malafides and favouratism as against the respondent Nos. 1 to 4.

10. In view of the above discussion, we do not see any merits in the petition. The same is, therefore, dismissed. No costs. Considering the circumstances, there shall be no order as to costs.

11. At this stage, Mr. Pande, learned counsel for petitioner seeks continuation of the status quo order dated 25.10.2024 for a period of two weeks. However, considering that the work in question was for providing E.I., Air Conditioning System,

Submersible Pump, CCTV System, Supply Arrangement, DG Set, On Grid Solar System and Audio Video System to newly constructed extension of third floor of Sales Tax office building at Chandrapur and though the bid of the respondent No. 4 stands accepted on 15.10.2024 and work order had been issued on the same date (page 208), the work has not been commenced as yet in view of the status quo order granted by this Court on 25.10.2024, even though the building already stands completed and the work order has already been issued, and it was expedient for the effective use of the building for the work under the NIT to be completed as expeditiously as possible, we are not inclined to accept the request. The same is turned down.

(ABHAY J. MANTRI, J.) **(AVINASH G. GHAROTE, J.)**

MP Deshpande