

(2016) 03 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition (L) No. 330 of 2016

Hitech Audio Systems Pvt. Ltd.	Vs	APPELLANT
The State of Maharashtra and Others		RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 3 BCR 552 : (2016) 135 SCL 122

Hon'ble Judges : S.C. Dharmadhikari and G.S. Patel, JJ.

Bench : Division Bench

Advocate : B.K. Barve, Sandeep Barve, Archana Lad and Sheetal Tanpure i/b. B.K. Barve and Co., for the Appellant; H.S. Venegaonkar, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—1. Rule. Respondents waive service. By consent of both sides, Rule made returnable forthwith.

2. By this petition under Article 226 of the Constitution of India, the Petitioner seeks to quash and set aside a work order which has been issued to the 3rd respondent by the 2nd respondent on 28th January, 2016 pursuant to a e-tender dated 21st December, 2015.

3. The petitioner is a company registered under the provisions of the Companies Act, 1956 and having its office at the address mentioned in the cause title. The 1st respondent is the State of Maharashtra through the Principal Secretary, Department of Public Works and the 2nd respondent is the Chief Engineer (Electrical), Public Works Department (PWD).

4. The 3rd respondent placed a bid in pursuance of this e-tender and was awarded the contract.

5. The 4th respondent has been impleaded as party respondent on the footing

that the equipment which was supplied by it to the 3rd respondent is not genuine and in the past, suffered from quality issues.

6. The present petition concerns the tender and the description of work and other details in regard to this tender are to be found at page 55 of the paper book. To the extent relevant, that reads as under:-

"GOVERNMENT OF MAHARASHTRA PUBLIC WORKS DEPARTMENT E TENDER NOTICE NO. 15/2015-16

Online percentage rate tenders in "B-1" Form are invited by the South Mumbai Electrical Division, (P.W.D.), Mumbai for the following work from Contractors registered in appropriate class of the Public Works Department of Maharashtra State. The name of work, estimated cost, earnest money, security deposit, time limit for completion etc. are as under.

7. The tender form, conditions of contract, specifications and contract drawings were to be downloaded from the website of the PWD, Government of Maharashtra. The documents required inter alia were a scanned copy of statement II mentioning the quantum or magnitude of works done by the contractor during last three years in Government of Maharashtra, showing at least one work of supply and installation of audio video systems in prestigious buildings like Mantralaya/Legislative Assembly/Council Houses/ other important Government premises valued at not less than Rs. 111 lakh (30% of tender amount of one year). Also required was a copy of a work order & work completion certificate from the officer not below the rank of Executive Engineer.

8. There are two contentions which have been raised before us by Mr. Barve appearing for the Petitioner. His first contention is that the tender flouts and violates the mandate of Article 14 of the Constitution of India and the guidelines of the Central Vigilance Commission. In regard to this, he would submit that there is no necessity to keep any secrecy, for whatever is uploaded on the website of the PWD for this e-tender ought to be in public domain. None of the uploaded bids or tenders should be password protected. Elaborating his submissions, he would submit that even a competing bidder or a member of the public must be able to access the e-tender and the contents thereof. In the present case, the password protection given to respondent no. 3 violates mandate of Article 14 of the Constitution of India and the Central Vigilance Commission guidelines.

9. The second submission is that the PWD and particularly the Executive Engineer, in taking the decision, has compromised the terms and conditions of the tender. They have been relaxed in order to favour or benefit the 3rd respondent. Mr. Barve would submit that the name of work is "providing fully comprehensive maintenance and service contract for audio conference system at Assembly Hall, Council Hall and Central Hall at Navin Vidhan Bhavan". The earlier tender and which also resulted in a writ petition in this Court had crucial words, namely, "digital audio conference system with voting, camera control and

language interpretation system" and which were to form part and parcel of the system to be installed at the Assembly Hall. Mr. Barve would submit that the Assembly Hall and Council Hall are the halls used when the assembly is in session and the Central Hall is used for other important events. In the session, there ought to be such comprehensive systems working and functional for the members of the assembly to be heard by each other and by the Hon''ble Speaker. Secondly, the inbuilt system enables a person or a member not familiar with the language of the State and speaking to the assembly to have a simultaneous translation. Such a system guarantees the smooth and efficient working of the Assembly. The nature of the legislature's business is such that the systems must work without disruption. The necessary continuity is guaranteed only when the class of contractor is the one notified in the e-tender notice. In the present case, the contractor should be a reputed original equipment manufacturer or its authorised dealer/system integrator with previous experience of satisfactorily installing and commissioning digital audio conference systems of not less than Rs. 111 lacs in any prestigious buildings of the Government of Maharashtra during the last three years.

10. Mr. Barve invites our specific attention to the statements in the writ petition that the 3rd respondent does not meet the eligibility criteria and also did not disclose the tendered documents to competing bidders. The 3rd respondent does not have the requisite experience to maintain such type of equipments including digital audio conference system with voting camera control and language interpretation system. The 2nd respondent, yet, upon the bid of 3rd respondent and for reasons best known to him, without even bothering to consider the bid of the petitioner, has certified the bid of the 3rd respondent as qualifying and complying. The petition points out that the petitioner got information that the 3rd respondent was registered and incorporated as a company, but which was much later than the period specified in the tender conditions for work experience. In such circumstances, Mr. Barve would submit that this being a public tender, the authorities were obliged to adhere to their own terms and conditions and no deviation therefrom was permissible given the nature of the job and the work.

11. Mr. Barve invited our attention to the two paragraphs in the affidavit in reply of the Executive Engineer (Electrical), PWD, Government of Maharashtra filed on behalf of the State, in which, there is, according to Mr. Barve, a categorical assertion in paras 7 and 8 that the documents relied upon by the petitioner, in support of the contentions, were scrutinised. A bare perusal of these documents shows that respondent no. 3 is in business since 2009 but it was a partnership firm and it was only from 2013 that it is a private limited company. In support of that, the 3rd respondent has submitted the last three years' income-tax returns. In dealing with para 5(d) of the petition, the Executive Engineer states that the tender does not contain any requirement of experience of three years and hence it is denied that the experience of three years was mentioned in the earlier tender notice and the same has been deleted from the present tender notice. Mr. Barve submits that if the tender notice is the one at page 55 of the paper book,

then the terms and conditions which are to be satisfied and the bidding documents which have to be submitted for envelope no. 1 specifically deal with experience. In any event, the wording of this condition would indicate that there is indeed a requirement of work experience and which is to be certified in the form of documents such as work orders and work completion certificates. For all these reasons, Mr. Barve submits the the impugned work order in favour of the 3rd respondent being contrary to the constitutional mandate, which is required to be adhered to in public tender, must be quashed and set aside.

12. Justifying the issuance of work order, Mr. Venegaonkar, learned Additional Government Pleader appearing for the State and the PWD through its Executive Engineer, invited our attention to the affidavit in reply of the State and submits that all the documents which are annexed therewith would indicate that due care and caution has been taken by the officers while evaluating and scrutinising the bids and satisfying themselves that the 3rd respondent is fit to be awarded the work. In doing so, Mr. Venegaonkar submits that the 2nd respondent has considered the work that was done of similar nature by the 3rd respondent at various Government sites, including in the chamber of the Chief Minister at Mantralaya, Mumbai. For all these reasons, he would submit that at the last minute, this Court should not intervene at the instance of an unsuccessful bidder, but should proceed to dismiss the petition. There is no violation of the constitutional mandate or the Central Vigilance Commission guidelines.

13. Mr. Chomal appearing for respondent no. 3 relies upon the affidavit of respondent no. 3 to submit that the 3rd respondent is technically proficient, and substantially experienced in the field of installation of audio video systems. Earlier, a partnership firm was already dealing in the same business, under the name and style as M/s. Ram Sangam Infotech from 2009, wherein the deponent of this affidavit was a partner along with his wife. Thereafter, this partnership firm was converted into a limited company and incorporated as such in the year 2013. Mr. Chomal submits that there was no requirement of previous work experience in the tender notice, but the 3rd respondent has produced voluminous documents and evidence to certify its experience and proficiency in the work that is required to be carried out in the Council Hall. The 3rd respondent, in the affidavit, states that he is a successful bidder in various Government contracts for the works similar to the nature of the present one and accordingly has been successfully maintaining the audio video conference system installed at the cabinet hall, Chief Minister's conference room, Deputy Chief Minister's conference room and the Chief Secretary's conference room at Mantralaya of the Government of Maharashtra, without any deficiency in the services or the quality. All this may be ascertained.

14. Mr. Chomal submits that the original equipments manufacturer M/s. Bosch has stopped supplying original equipments and the spares. However, the spares are openly traded and available in the market. They can be procured by parties like the 3rd respondent and supplied whenever required. In such circumstances,

not much can be made of the conditions in the tender notice. Mr. Chomal, therefore, submits that bearing in mind the legal principles, this Court should not interfere in its writ jurisdiction with the decision of the State. Secondly only because another method could have been adopted and which is in this Court's opinion a better one, that will not enable this Court to interfere in writ jurisdiction. The process is fully transparent and is not vitiated by any unfairness, arbitrariness or malafides.

15. Reliance is placed by Mr. Chomal on the decision of the Hon'ble Supreme Court of India in the case of Michigan Rubber (India) Limited vs. State of Karnataka and Others , (2012) 8 SCC 216 and another decision in the case of B. S.N. Joshi and Sons Ltd. vs. Nair Coal Services Ltd. and Ors. , (2006) 11 SCC 548 He also relies upon the decision in the case of Jagdish Mandal vs. State of Orissa and Ors. , (2007) 14 SCC 517

16. With the assistance of the counsel appearing for both sides, we have perused the petition and all annexures thereto so also the affidavits placed on record.

17. In the writ petition, it is stated that respondent no. 2 has invited a bid. It is stated to be an e-tender numbered as SR/NVB/3005/2015-2016 dated 21st December, 2015. A copy of this is to be found at annexure "E" page 54 of the paper book. The name of the work is "providing fully comprehensive maintenance and service contract for audio conference system at Assembly Hall, Council Hall and Central Hall at Navin Vidhan Bhavan, Mumbai-32". That is also the name of work found in the e-tender notice. The time limit in the tender is 36 calendar months including the monsoon. The class of contractor, which we have reproduced above, is either a reputed original equipment manufacturer or its authorised dealer/system integrator who has previous experience of satisfactorily installing and commissioning of audio conference system of not less than Rs. 111 lacs in any prestigious buildings of the Government of Maharashtra during the last three years.

18. Upon a query to Mr. Venegaonkar as to how it is that there is a clear and marked difference between the description of the work at page 49 of the paper book and that at page 55 in the subsequent e-tender, Mr. Venegaonkar, on instructions, states that page 55 shows the revised terms and conditions with regard to the very same nature of work and the absence of the words "digital" and "voting camera control and language interpretation system" are neither decisive nor conclusive. It is the very same equipment which is required and though the wording now is "fully comprehensive maintenance and service contract for audio video system", it is understood that the required system must have inbuilt audio video conference systems with voting camera control and language interpretation system. This is still the same system required in both the first and second e-tender notices.

19. We are not as much impressed by the argument of Mr. Barve about the password protection. We accept the statement by the State that the e-tender

submitted by all bidders is accessible wholly to a rival or a competitor in this case. We do not, therefore, wish to pursue this matter any further.

20. Equally, in the light of clarification of Mr. Venegaonkar in respect of installation of inbuilt voting camera control and language interpretation system, we do not think that the authorities have changed the terms and conditions in order to favour a particular bidder. Therefore, the requirement is clear and the words "fully comprehensive audio video conference system" would mean that such system which is equipped with inbuilt facilities of the above nature have to be maintained and serviced. It is thus a maintenance and service contract of installed equipment at Council Hall and Central Hall of the Maharashtra State Assembly, where the assembly holds its periodical sessions, discussions, deliberations on policy and law, and thereafter passes resolutions and takes decisions. In the Council Hall, those elected by the public have a right to speak. They ought to be audible to the assembly and the Speaker of the house. Therefore, whatever be the make of the installations and whatever be the systems in place, their maintenance and service ought to be of high degree so that the system operates smoothly and without any disruption. It is for that reason that a public tender was floated. The bids were notified in e-form. Therefore, considering the class of contractor, its design for the above work at such vital installation, necessarily the bidder must have previous experience of satisfactorily installing and commissioning of audio conference system of not less than Rs. 111 lacs in any prestigious buildings of the Government of Maharashtra during the last three years.

21. In these circumstances, it is really surprising and indeed shocking that the Executive Engineer has dared to state in this Court that previous experience is not a required criterion to be fulfilled by the contractor. Therefore, the bid need not be compliant insofar as this aspect is concerned. The two paragraphs in the affidavit in reply, on which Mr. Barve placed heavy reliance, make an interesting reading. We reproduce them for ready reference:-

"7. In respect of the contention of the Petitioner, in respect of the experience of Respondent No. 3 is concerned, I have to state that the document at Exhibit -C relied upon by the Petitioner in support of this contention is the document of certificate of registration, in respect of Value Added Tax and is not a Certificate of incorporation of Respondent No. 3. I say that the documents submitted by Respondent No. 3 is envelop 1 has been duly scrutinised and the said documents alongwith Board Resolution shows that Respondent No. 3 is in the business since 2009. As the partnership firm till 2013 and as private limited company since 2013 till date. In support of this the Respondent No. 3 has submitted his last 3 years Income Tax returns.

8. I say that, the contention of the Petitioner in respect of para No. 5(d) is concerned. I say that neither the tender mentions any experience of 3 years and hence it is denied that the experience of 3 years was mentioned in earlier Tender Notice and the same has been deleted from the present Tender Notice. Copies of

both the Tender Notices are already annexed to the Petition."

22. Surprisingly, the same deponent in para 5 of the affidavit states that in respect of sourcing and eligibility of contractors, care has been taken to ensure that only those contractors who have experience of maintaining, servicing and curing electrical defects are included in the process. This has been done on the basis of past experience, wherein annual maintenance contractors have showed their inability to restore the functioning of the installed systems whenever there was any electrical defect and electrical faults.

23. Given the nature of the equipment to be installed at such crucial places, and going by the nature of work and the prior experience condition that is reproduced by us hereinabove, we cannot accept the stand taken in para 8 that the tender does not require any previous experience of three years, or the denial that a previous requirement experience of 3 years was mentioned in earlier tender notice but was deleted from the present tender notice. The requirement of experience is very much mentioned in that column of even the present tender.

24. We inquired from Mr. Venegaonkar as to how respondent no. 3 complies with this requirement and which is important and cannot be compromised at any cost. All that Mr. Venegaonkar would show to us is the contents of para 7 of the affidavit in reply of the State and some annexures thereto. If one looks at them, they would indicate as to how casually and lightly the matters are taken by the Department and particularly the Electrical Wing of the PWD. They are aware that they have to install such systems which are equipped with voting, camera control and language interpretation system for the Assembly and Council Hall. They convened a meeting in the office of the Chief Engineer at a pre-bid stage. The minutes of the pre-bid conference held in his office are annexed to the affidavit in reply. The chairperson of the meeting was the Chief Engineer (Electrical). He stated that clarifications were required only on some issues which were raised: firstly that the installed system is of equipment manufactured by multiple brands, one of which is Bosch; and secondly, that the Department needs the services of a qualified and experienced system integrator to ensure smooth working of the system. Then, with regard to another query, he clarified that as per previous experience, it was observed that to ensure uninterrupted and smooth operation of such an important installation the bidder should have the capability to attend to issues arising due to electrical faults; and hence the tender condition prevails. Then, in response to a query by one of the bidders if the requisite prior experience relevant to the work had to be of at least one work of maintenance of digital audio video system and not of installation and commissioning of only an audio video system, the chairperson again clarified that the tender condition will prevail, meaning thereby, there is a requirement of not only installation and commissioning an audio video system of the required mandatory sum, but there must be experience of at least one such work. Thus, we do not see anything on record by which one can support the stand in the affidavit in reply reproduced above. The 3rd Respondent too sought clarifications,

one of which was whether it is necessary to install a system only of original equipment manufactured by M/s. Bosch. The 3rd Respondent also inquired about the current status of the system installed at the Assembly Hall, Council Hall and Central Hall at Navin Vidhan Bhavan. The chairperson clarified that the system is in working condition and has to be maintained on as is where is basis. Then, in respect of whether regular maintenance was carried out or not, the chairperson clarified that the system has not been maintained since last six months. Then, the period of payment was an issue, which was sought to be clarified by stating that bills would be cleared as per availability of funds.

25. We have gone into such details for the simple reason that this is not the first time that this petitioner has approached this Court. We had a writ petition before this Court by the very petitioner. The petitioner, in that petition, had assailed a similar exercise of the 2nd respondent. On that writ petition (being Writ Petition (L) No. 2786 of 2015), the Court called upon the parties to canvass detailed submissions. However, after some arguments, the State, in a somewhat identical situation, made a statement based on which that writ petition came to be disposed of. A copy of the order to that effect has been annexed to the present petition as Annexure "B" at page 44 of the paper book. That order records that the 1st and the 2nd respondent would withdraw their tender dated 11th august, 2015 and the work order, which was issued by the 2nd respondent dated 24th September, 2015. The Court clarified that it would be open for these respondents to issue a fresh tender notice setting out specific and clear terms, particularly with regard to the nature of the work and the sourcing thereof, the eligibility of the contractors etc. and the tender process would then continue in accordance with law. The 3rd respondent consented to this order. It was not precluded from participating in the further process.

26. We are mindful of the fact that when same parties were before the Court in the earlier round raising identical issues as are today raised before us, merely because this Court had not assigned detailed reasons in the light of the concession of the State, this does not mean that similar course must follow in the present round. That is why we are elaborating our reasons and after scanning the entire record. To be fair to the 3rd respondent, documents denoting its experience have also been carefully perused by us. They are to be found annexed to the affidavit of the State. On the strength of these documents, it is said that the respondent no. 3 possesses the necessary work experience. This is after stating on oath that there is no such requirement in the present tender. However, all the works that are mentioned in the statement of works would indicate that all that the 3rd Respondent has done is to supply and install electrical materials in some PWD installations, as well as LAN cabling, and the occasional audio-visual equipment. This is certainly a far cry from either installing or maintaining a sophisticated and complex digital audio-video system for the State legislature, one that requires additional facilities such as voting and translation built-in. Of this level of equipment supply and maintenance we find no evidence of sufficient work experience. We also note that this very system that is

the subject matter of the tender was maintained by the Petitioner itself till as late as July 2015. As the chairman of the pre-bid meeting noted, there has been no maintenance since. That only means that no contract was in place for such maintenance, and the last such contractor was the Petitioner. The 3rd Respondent's work experience, according to the statement of works shown to us does not indicate any installation and supply of such an audio video system. In the 3rd Respondent's statement no. 2, there are details of work supposedly of similar type and magnitude viz., supplying and installation of audio video systems for 7th floor and 6th floor for the cabins of Chief Minister, Deputy Chief Minister and Chief Secretary of Mantralaya Main Building. In the affidavit in reply of respondent no. 3, there is a bald assertion that it is the successful bidder in various Government contracts of the works similar to the nature of the present one and has been successfully maintaining the audio video conference system installed at the Cabinet Hall, Chief Minister Conference Room, Deputy Chief Minister Conference Room and the Chief Secretary Conference Room at Mantralaya. For the State to project this work as complete and as meeting the work experience requirement in the present tender and that too after taking a bold stand that such a criteria was not required to be fulfilled at all presents a misleading picture. The cabins of Chief Minister and Deputy Chief Minister are not comparable in size, dimension or requirement at all with the present work. Those are at best digital displays with accompanying sound systems and perhaps a video conferencing facility. We do not think that installation of C. C. T. V. and maintenance of computerized biometric system are works which would qualify as relevant or identical for the purpose of the present tender.

27. We reiterate that the work of providing fully comprehensive maintenance and service for audio conference system of Assembly Hall, Council Hall and Central Hall at Navin Vidhan Bhavan is the subject of the present tender. The area to be covered in a dome like structure of great height is expansive and huge. The legislative assembly accommodates 288 elected members, Speaker and the support staff and sitting in extreme corners save and except the Hon'ble Speaker occupying the podium. The systems have to be extremely efficient and throughout in working condition. The audio-video controls must avoid a echo and ensure that sound is controlled and modulated at intervals. Then, there is a simultaneous session working of those nominated or indirectly elected members termed as a Upper House or Legislative Council. That takes place in another hall with somewhat identical size, dimension and height. The third hall is a Central Hall and once again very big in size and enough to conduct a joint session of both Houses, special conventions, conferences, official and cultural events at which high dignitaries, including His Excellency the Hon'ble Governor of the State are present. Hence, when it comes to quality, durability etc., there cannot be any compromise with the evolved criteria and standards. These cannot be surrendered or sacrificed. For, there are visitors galleries and offices surrounding and encircling the main hall. Those inside have to be audible there as well for none of these are within the ordinary hearing distance. That is why we demand

strict adherence to the terms and no casual or light hearted approach resulting in departure therefrom can be tolerated. The systems ought to be functional throughout the years and in future as well.

28. We have also seen the other document which would indicate gross turnover and certified by the Chartered Accountant from the period 1st April, 2012 to 31st March, 2015. This is hardly a document evidencing work experience. We are not impressed at all with statement no. III, which contains details of plant and machinery immediately available with the tenderer. None of the equipment and set out in table could be said to be sufficient for the present contract. Even the PWD does not feel it to be so. We are also not impressed with the financial returns, i.e., the account statement of the notes forming part of the balance-sheet as on 31st March, 2015. For the schedule of gross block assets, in the assets column as against intangible assets, software licence a sum is shown of Rs. 15,600/-. This is then followed by depreciation for the year Rs. 3,186/- and the net block is Rs. 12,414/-. Tangible assets are some mobile phones, computer and machinery and tools worth Rs. 3,24,986/- and its net value is Rs. 3,24,200/-. It is on the strength of this equipment and these financials that the 3rd respondent projects that it would be able to handle the subject contract awarded to it. The experience criteria which is stated to be satisfied as set out in the affidavit in reply of the 3rd respondent would indicate that the works claimed as successfully carried out of the monetary sum and set out in the affidavit does not form part of the statements which were furnished or maintained by the State Government. In addition to the Chief Minister's cabin, Deputy Chief Minister's cabin and Chief Secretary's cabin, this affidavit projects the successful maintenance of audio video conference system installed at the Cabinet Hall, Chief Minister Conference Room, Deputy Chief Minister Conference Room and the Chief Secretary Conference Room at Mantralaya. Annexure "A" is the proof of the work completion certificate. The work completion certificate, copy of which is at Annexure "A" would indicate supplying and installation of audio-video systems at 7th floor and 6th floor cabins of Chief Minister, Deputy Chief Minister and Chief Secretary, far from any conference hall as projected in the affidavit. These works are said to be carried out pursuant to work order no. 3043 dated 25th July, 2014. The work completion certificate is issued on 22nd January, 2015. This, according to the 3rd respondent satisfies the criteria of work experience. We are unable to agree for, a cabin and cabinet hall cannot be compared with the Council Hall, Assembly Hall dome type structure. Government and secretarial building, even for a layman or a ordinary citizen and a building holding sessions of State assembly comprising of more than 300 members, support staff, administrative blocks are not on par. For the State Government and PWD to think they are is indeed a mockery of the whole process.

29. In the light of the above discussion, we do not think that the mandate of Article 14 of the Constitution of India has been adhered to by the State. Respondent no. 3 has also stated that as regards the earlier tender being relied upon by the petitioner company, they had bid at par with the aforesaid estimated

cost of respondent no. 2, while the present respondent had submitted a bid of 8.1% below the estimated cost i.e. Rs. 3,38,67,804/-. It blames the petitioner for indulging in litigation, but we are not concerned here with the conduct of the petitioner, but the conduct of the State in a matter of public tender. We are aware of the principles laid down in the case of Michigan Rubber (India) Limited (supra). We are also mindful of the fact that we are not experts. We are also aware that we cannot interfere with the tender conditions. We are interfering in this case simply because the respondent nos. 1 and 2 represent that the terms and conditions of the tender are those which have been notified for the benefit of all bidders and participants and then makes a marked departure therefrom without producing any material justifying such deviation. We have found that the work experience is a vital and important eligibility criteria. That could not have been compromised or given up by the State in the manner done. We have found that the State itself and particularly the Department of Public Works, its Executive Engineer (Electrical) are not serious in adhering to the terms and conditions of the tender. Given the nature of the work and the maintenance that is required, the State ought to choose the best and the most experienced in the field. Once the tender process does not meet the requirements of fairness and reasonableness, then there is no alternative for this Court but to interfere. If the State, or its instrumentality, acts reasonably and in public interest in awarding contracts, then the Court's interference is not justified or permissible. However, no person can claim a fundamental right to carry on business with the Government. When the decision of awarding contract is not in accordance with the terms and conditions of the tender notified and the larger public interest is affected adversely, then this Court can, in its writ jurisdiction, interfere with the decision of the State.

30. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in terms of prayer clause (b) to the extent that the work order in favour of 3rd respondent being vitiated as above, is quashed and set aside.

31. At this stage Mr. Chomal appearing for respondent no. 3 prays that this order be stayed for a period of two weeks so as to enable the 3rd respondent to challenge this order in a higher Court. This request is opposed by Mr. Barve appearing for the Petitioner. We have found that the decision to award contract was taken by the State on 28th January, 2016. We are deciding the writ petition today i.e. 2nd March, 2016. We sat nearly an hour beyond Court hours for completing the hearing and passing this order. However, the Maharashtra State Assembly is going to hold its budget session from 9th March, 2016 and not to cause any inconvenience and harm to it and in the larger public interest, we stay our order by a period of two weeks from today.