

(2004) 04 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 2176 of 2004

Sham Manwani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Citation : (2004) 4 MhLj 904

Hon'ble Judges : V.G. Munshi, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : J.N. Singh, for the Appellant; N.B. Khandare, AGP, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard. Rule. By consent, rule made returnable forthwith.

2. The arbitrary and unfair refusal to issue blank tender form to the petitioner has compelled the petitioner to approach this Court with this petition. The petitioner is a registered contractor in Class-II under the Government of Maharashtra, Public Works Department. He is the sole proprietor of the proprietary concern by name M/s Shama Construction Company and is in the business of construction work for the last more than 15 years, having to his credit the execution of the work to the tune of crores of rupees under various Departments of the State Governments as well as the Central Government. A tender notice came to be published on 28-2-2004 in a daily newspaper "Lokmat" (Marathi) bearing tender notice No. B1/3/2003-2004 for the construction of Varthan Storage Tank at Soygaon in the District of Aurangabad and the period for sale of the tender forms was disclosed to be from 3-3-2004 to 2-4-2004. Initially when the petitioner approached the authorities to collect the tender form, he was informed to contact after 10 days on the ground that the forms were not available. On 18-3-2004 the petitioner submitted an application for issuance of the blank tender form. However, the respondent No. 3 refused to

issue the blank tender form on the ground that the petitioner was not qualified to submit the tender. The petitioner was orally informed that the reason for non-issuance of the blank tender form was that the petitioner had not submitted the pre-qualification form within the stipulated period.

3. It is the case of the petitioner that the tender form is being refused to be issued to the petitioner not on account of the conditions disclosed in the tender notice and that, therefore, the respondents are not entitled to refuse the tender form to the petitioner. It is his further case that the respondents in collusion with some of the bidders and for extraneous reasons have refused to issue the blank tender form to the petitioner in an arbitrary and illegal manner. It is his further case that in the absence of the proposal for pre-qualification being made a condition precedent for issuance of the tender form and the same was made known in the tender notice, the respondents could not have refused the issuance of the tender form to the petitioner on the said ground.

4. It is the case of the respondents that the tender notice published in the newspaper clearly discloses that detail instructions were available on the notice board of the office of the Executive Engineer and it was expected that the desiring tenderer should have read those detail conditions relating to the tender notice. Besides apart from the fact that the instructions displayed on the notice board, the same could have been made available to the petitioner on an application, if so submitted to the Executive Engineer. It is their case that the desiring tenderer is required to submit the pre-bid capacity document and for that purpose he has to submit a prescribed application form which is available in the office of the Executive Engineer on payment of Rs. 2,000/-. The pre-bid capacity document is a pre-condition for issuance of the tender form and a person who is qualified and in possession of the bid capacity document is alone entitled for issuance of the tender form. According to the respondents, the bid capacity forms were available from 8-3-2004 to 16-3-2004 and those forms, with complete information and document were required to be submitted on or before 20-3-2004 which the petitioner failed to submit. It is also their case that though the tender notice discloses the period of sale of tender forms from 3-3-2004 to 2-4-2004, the period from 8-3-2004 till 16-3-2004 was reserved for sale of the pre-bid capacity forms. It is also their case that prior to 8-3-2004 no tender form was supplied to any person and it is only after 8-3-2004 that the forms were issued to those who had submitted the pre-bid capacity document and those who were found qualified for the same. The date of 3-3-2004 which was mentioned in the tender notice was only with the view to maintain the time schedule prescribed under the Government resolution. According to the respondents, the petitioner is not entitled for issuance of the tender form.

5. There is no dispute between the parties that the tender notice published in the Lokmat on 28-2-2004 invited tenders from the qualified registered contractors and the last date for receipt of the tender was disclosed as 7-4-2004 by 14 hours. The notice also disclosed that the tender forms were available for sale

from 3-3-2004 to 2-4-2004. The notice disclosed various other details like the name of the work, estimated amount of expenditure for the work, guarantee amount, earnest amount, deduction to be made from the bill amount, period during which the tender forms will be available for sale and the place where the forms would be available for sale, last date and time and place for acceptance of tenders, as well as the date, time and place for opening of the tenders, price of the tender form, period within which the work is required to be completed and the class of the contractor who can submit his tender. Undoubtedly, the notice also disclosed that detail tender form would be available on the notice board of the Executive Engineer, Irrigation Department (Local level) Department, Aurangabad. It also disclosed that on an application the copy of the notice can also be made available free of charge.

6. Bare reading of the said notice of tender, therefore, undoubtedly discloses that detail tender form would be available for perusal on the notice board of the Executive Engineer. At the same time, the notice by itself nowhere discloses that the desiring tenderer has to submit the pre-bid capacity document within specified period or that in the absence of production of such pre-bid capacity document by specified date the desiring tenderer would not be entitled for issuance of the tender form. It is sought to be contended across the bar on behalf of the respondents that the condition regarding production of the pre-bid capacity document within the specified period and prior to 16-3-2004 was clearly stated in the tender form and that the same was displayed on the notice board of the Executive Engineer. However, the fact remains is that the notice published on 28-2-2004 clearly specified the period for sale of the tender form to be from 3-3-2004 to 2-4-2004 and the last date for submission of the tender being 7-4-2004. In other words, any desiring tenderer could have obtained the tender form even on 2-4-2004, after submission of the pre-bid capacity document and could submit his/her tender on or before 7-4-2004. Bare reading of the notice of 28-2-2004 therefore nowhere gives any indication to any desiring tenderer about the necessity of approaching the respondents prior to 2-4-2004 with pre-bid capacity document in order to enable him to purchase the tender document and that the last date for submission of the pre-bid capacity document to be 20-3-2004. Admittedly, these details are found to have been disclosed only in the tender form and on the notice board of the Executive Engineer. In other words, even though the notice published in the newspaper intimates the desiring tenderers that they could approach the authorities to purchase the tender forms till 2-4-2004, any desiring tenderer who might have approached the respondents after 20-3-2004 would not have been entitled to get the tender form, if the contention of the respondent is accepted.

7. As already seen above, once it is made clear to the desiring tenderer that they could approach the authorities to get the tender form till 2-4-2004 and even the detail conditions regarding the work and the tender are available on the notice board of the Executive Engineer, it was nowhere informed to the desiring tenderer that they had to ascertain about the detail conditions of the tender prior

to 20-3-2004 so that they could furnish the pre-bid capacity document by the said date and thereafter purchase the tender form. In other words, the fact that the desiring tenderers have to submit the pre-bid capacity document by 20-3-2004 was not made known to the desiring tenderer at the time of publication of the notice of tender, rather it was kept concealed in the tender form itself. Certainly this act on the part of the respondents, discloses unfairness and arbitrary exercise in relation to the mandatory requirement of disclosure of the relevant condition to the desiring tenderers. If the condition regarding last date of production of the pre-bid capacity document was 20-3-2004 and the said date falls within the period during which the tender forms could have been purchased by the desiring tenderers, certainly it was necessary for the respondents to disclose the said date and information in that regard in the tender notice itself which was published in the Lokmat on 28-2-2004. In the absence of knowledge of the said information, any desiring tenderer might have been misled and the petitioner is one of the glaring example in that regard.

8. The condition in relation to submission of the pre-bid capacity document being a mandatory condition and pre-requisite for obtaining the tender form by the desiring tenderers, it is necessary for the authorities to reveal the last date in that regard while issuance of the tender notice itself. Failure in that regard can result in great prejudice not only to the desiring tenderers but even to the State as on account of absence of knowledge in that regard a better qualified tenderer may not be able to submit his tender and participate in the contest which may result in failure to avail the services of the best qualified contractor for carrying out the tender work. For all these reasons, therefore, the petitioner is justified in contending that the respondents could not have refused to issue the tender form to the petitioner on the ground on which it was refused.

9. It was sought to be contended on behalf of the petitioner that the allegation on the part of the petitioner that the petitioner had approached the respondent, for issuance of the tender form on 18-3-2004 was false and that the petitioner never approached the respondents for issuance of the tender form. Apart from the fact that there is categorical statement on oath in that regard by the petitioner, it is a matter of record that the petition was filed in the Court on 29-3-2003 and the notice of the petition was issued to the respondents on 31-3-2004, yet even on that day the respondents did not come forward expressing their willingness to issue the tender form to the petitioner. It is not in dispute that the petitioner is a duly registered contractor. In fact, the certificate dated 17-2-2001 read with the certificate dated 3-2-2004 clearly discloses that the petitioner is a holder of certificate of registration of approved contractor in Class-II and the tender form discloses that the tenders were invited from contractors of Class-IV and above and apparently, therefore, the petitioner is entitled to submit his tender in relation to the work in question and he could not have been refused the tender form and certainly not on the ground on which it was refused.

10. The petition, therefore, succeeds. The respondents are directed to issue blank tender forms to the petitioner in respect of tender notice No. B1/3/2003-2004, for the work of construction of the Varthan Storage Tank at Taluka Soygaon, District Aurangabad, forthwith, on payment of charges, in accordance, with law and further to accept the tender form submitted by the petitioner, completed in all respects, if the petitioner is fulfilling the eligibility criteria and the requirements, if submitted till 4:30 p.m. today. Rule is made absolute accordingly with no order as to costs.