



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE R DEVDAS

WRIT PETITION NO. 20095 OF 2023 (GM-TEN)

BETWEEN:

PUSHKRAJ CRUSHING EQUIPMENTS PVT LTD
(A COMPANY INCORPORATED UNDER
THE COMPANIES, ACT, 2013),
S.NO. 326/2A, P NO. 35,
KODOLI MEGHDOOT HOUSING SOCIETY,
SATARA, MAHARASHTRA STATE,
PIN CODE - 415 004,
REPRESENTED BY ITS DIRECTOR,
MR. KULDEEP RATANLAL MANDOWARA.

...PETITIONER

(BY SRI. R.V. NAIK., ADVOCATE)

AND:

THE SENIOR DIVISIONAL ENGINEER
CO. ORD, SBC,
SOUTH WESTERN RAILWAY, 2ND FLOOR,
KSR RAILWAY STATION BUILDINGS,
NEAR DORMITORY BUILDING, MAJESTIC,
BENGALURU - PIN CODE - 560023.

...RESPONDENT

(BY SRI. K.S. RAJESH GOWDA, CGC)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO DIRECTING THE R1 TO
CONSIDER THE E-TENDER DATED 27/09/2023 OF THE
PETITIONER AT ANNEXURE-K AND L AND THE
REPRESENTATION DATED 29/08/2023 AT ANNEXURE-M AND
ETC.,





THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

R.DEVDAS J., (ORAL):

The petitioner, a company incorporated under the Companies Act, 2013, and engaged in the business of supplying Crushing Equipments and Machineries and civil construction works, is before this Court seeking a direction to the respondent-South Western Railway to consider the tender bid submitted by the petitioner while responding to the e-tender notification dated 28.08.2023 and to consider the representation dated 29.08.2023 at Annexure-M given by the petitioner-company.

2. Learned Counsel for the petitioner submits that although the petitioner is the only entity that has offered its bid in response to the e-tender notification issued by the respondent, nevertheless, it is given to understand that because the petitioner is a start-up company and does not meet the required criteria, the respondents have decided to call for a re-tender. Learned Counsel for the



petitioner draws the attention of this Court to Annexure-A1, which is a communication made by the Additional Secretary and Development Commissioner, MSMEs, Ministry of Micro, Small and Medium Enterprises, Government of India, New Delhi, to all Central Ministry/Department/CPSUs/All concerned regarding relaxation of norms for start-ups and MSMEs in public procurement on prior experience and prior turnover criteria. Learned Counsel draws the attention of this Court to paragraph No.4, wherein it is made clear that in exercise of the provisions contained in the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012, it has been clarified that all Central Ministry/Department/PSUs may relax condition of prior turnover and prior experience with respect to MSMEs in all public procurements subject to meeting of quality and technical specifications. Moreover, the petitioner has also secured a tender from the Konkan Railway Corporation Limited as could be seen at Annexure-G dated 28.03.2023. Since the learned Counsel for the respondent has submitted that the



petitioner has disclosed from the documents tender that it will not be in a position to participate in a tender bid for more than Rs.50.00 Lakhs, learned Counsel for the petitioner submits that at Annexure-G, the tender granted to the petitioner is in a sum of more than Rs.5 Crores 38 Lakhs.

3. Having regard to the submissions made by the learned Counsel for the petitioner and on perusal of the documents available on record, this Court is of the considered opinion that the respondent is required to take into consideration the communication dated 10th of March 2016 at Annexure-A1, made by the Additional Secretary and Development Commissioner/MSMEs/ which is also applicable to the respondent-South Western Railway. The respondent also required to take into consideration the fact that a tender has been awarded by the Konkan Railway Corporation Limited to the tune of more than Rs.5 Crores 38 Lakhs to the petitioner.



4. Having regard to the material available on record, the respondent shall consider the representation given by the petitioner and consider whether the tender can be allotted to the petitioner or if the tender cannot be proceeded only on the ground that the petitioner is the only entity that has responded to the e-tender notification and a fresh tender has to be called for, then the participation of the petitioner in the fresh tender cannot be rejected on the ground that it is a start-up company. The respondents are required to take into consideration the directions issued by the Union of India as noticed hereinabove and proceed in accordance with law.

Ordered accordingly.

5. With these observations, the writ petition stands **disposed of.**

**Sd/-
JUDGE**

DL
CT: JL