



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1723 OF 2024**

Shri Sunil S/o Dilip Ramoshi,
Age: 33 years, Occu.: Business,
Proprietor of Maha Grampanchayat Shoppe,
Nandurbar, Tq. And District Nandurbar,
R/o: Plot No.35-A, Jetvan Park, Near Gurukul Nagar,
Nandurbar, Tq. And District Nandurbar.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
 2. The Chief Executive Officer,
Zilla Parishad, Nandurbar, District Nandurbar.
 3. The District Program Officer,
(Women and Child Development Department),
Zilla Parishad, Nandurbar, District Nandurbar.
 4. M/s. Sudarshan Suppliers and Developers,
247, Ekata Nagar, Nalva Road, Nandurbar,
Tq. And District Nandurbar,
Through its Proprietor,
Shri Dilip Manga Thakre,
Age: Major, Occu.: Business,
R/o: 247, Ekata Nagar, Nalva Road, Nandurbar,
Tq. And District Nandurbar.
- ..Respondents

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Mr. Y. B. Bolkar, Advocate for the Petitioner.
Mr. P. S. Patil, Addl. GP for Respondent No.1.
Mr. R. N. Jain, Advocate for Respondent Nos.2 and 3.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 26th FEBRUARY, 2024.**

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India thereby impugning order dated 18.01.2024 issued by respondent no.3-District Program Officer, Zilla Parishad, Nandurbar thereby disqualifying the petitioner in E-Tender bearing ID No.2024_NANDU-978137_1 dated 03.01.2024.

3. The petitioner contends that he is the proprietorship firm duly registered under Maharashtra Shop Act under name and style as “Maha Grampanchayat Shoppe”. The petitioner claims that the petitioner has successfully executed contract under Zilla Parishad, Nandurbar for supply of goods/material for modernization of Anganwadis. As such, he possesses requisite experience in execution of Government contract. The respondent nos.2 and 3 floated tender for supply of adult scales to Anganwadi centers for weighing pregnant and lactating mothers. The petitioner responded the said tender since he was compliant of requisite conditions. The documents in support of his eligibility were made part of the tender. However, respondent no.3 under the impugned order, disqualified petitioner giving two reasons viz. (i) the petitioner do not comply condition no.3 that requires certificate of authorized dealer from the manufacturer and (ii) the certificate of experience for supply of goods specified in the tender notice is not filed as per condition no.12. According to the petitioner, the reasons given for his disqualification are contrary to the record. The petitioner complies with both the conditions. However, he has been wrongly disqualified for accommodating other bidders.

4. Mr. Bolkar, learned Advocate appearing for the petitioner invites our attention to the authorization letter issued by Chitlangi Gift and Toys (Manufacturing and Suppliers) of Toys, Edu. Charts, Plastic Household Items, etc. dated 06.01.2024 there by authorizing the petitioner to supply products and they are ready to supply the weighing machine as per bid documents. Mr. Bolkar, learned Advocate invites

our attention to the experience certificate issued by the Project Officer (Child Development) certifying petitioner's experience of supplying goods as indicated in the certificate. He would, therefore, submit that during the scrutiny of his technical bid, petitioner has been wrongly declared as disqualified.

5. Mr. Patil, learned Addl. G.P. and Mr. Jain, learned Advocate appearing for respondent nos.2 and 3, however, vehemently oppose the prayer in the writ petition and submit that the petitioner has been rightly declared as disqualified. The documents attached alongwith the tender of the petitioner are not compliant of requisition under condition nos.3 and 12 of the tender notice.

6. We have heard the learned Advocates appearing for the respective parties and perused the documents tendered into service. Apparently, the petitioner responded to the tender notice issued by respondent nos.2 and 3. As can be seen from the title clause of the tender notice, the bids were invited for supply of weighing machines and selection of supplier agency. There are in all 14 qualifying conditions for technical bid. The relevant condition nos.3 and 12 reads thus:

“३. निविदाधारक अधिकृत विक्रेता/पुरवठादार असल्यास तसे उत्पादकाचे अधिकृत विक्रेता असल्याचे अद्यावत प्रमाणपत्र निविदेसोबत जोडणे आवश्यक आहे.

१२. निविदेतील खरेदी करावयाचे साहित्य यापुर्वी कोणत्याही शासकीय / निमशासकीय / शासनमान्यता प्राप्त आस्थापनेस समाधानकारक पुरवठा केलेबाबत अनुभव असणे आवश्यक असून तसे निविदाधारकास मंजूर करण्यात आलेल्या पुरवठा आदेशाची / साहित्य पुरवठा केलेबाबत प्रमाणपत्राची प्रत ऑनलाईन अपलोड करणे आवश्यक आहे. ”

English Translation

“3. If the tenderer is an authorized dealer/supplier, then the manufacturer's updated authorized dealer certificate must be attached with the tender.

12. Must have previous experience in satisfactory supply of materials to be procured in the tender to any Government/Semi-Government/recognized Institution and also the tenderer must upload online a copy of approved supply order/experience certificate for supply of materials.”

7. The petitioner appears to have relied upon a communication dated 06.01.2024 issued by Chitlangi Gift and Toys to contend that he complies with condition no.3. The authorization letter issued by Chitlangi Gift and Toys in favour of the petitioner states as under:

“We Chitlangi Gift & Toys, Aurangpura Circle, Aurangabad Supplier, Distributor, Seller, Manufacturer of Different types of items. We hereby ready to required supply of weight machine as per bid documents to Mahagrampanchayat Shoppee & also authorize to submit a bid, negotiate and receive the order from you against your Bid Enquiry. We hereby also authorize Mahagrampanchayat Shoppee to represent us to Position & Promote Equipment’s. We hereby extend in accordance with the General Conditions of mahila v bal vikas vibhag with respect to the Goods offered by the above firm in reply to this invitation for Bid. We authorized to Mahagrampanchayat Shoppee to supply products covering.”

8. From reading of the aforesaid communication, apparently it can be gathered that Chitlangi Gift and Toys themselves are not manufacturer of weighing machines nor the petitioner himself is authorized seller or supplier of the goods manufactured by Chitlangi Gift and Toys. The careful reading of the authorization clearly depicts that the Chitlangi Gift and toys themselves are procuring goods from third party and shown readiness to supply the same to the petitioner or submit the bid, negotiate and receive order. Such communication cannot be treated as the authorization given by the manufacturer to supply his goods. Therefore, the contention of the petitioner that authorization dated 06.01.2024 given to him by Chitlangi Gift and Toys complies condition no.3 is not acceptable. So far as the condition no.12 regarding experience of supply of goods is concerned, the petitioner relies upon two certificates issued by Project Officer, Child Development Department to Anganwadi centers. However, the quantity of the supply goods is not depicted in such certificates. Even, the specification of supplied goods are absent. Therefore, it is difficult to agree with the

contention of the petitioner that he complied with the condition no.12 or he has been wrongly disqualified.

9. At this stage, reference can be given to the judgment of the Supreme Court of India in case of ***M/s N. G. Projects Limited v. M/s Vinod Kumar Jain***¹ wherein it is observed as under:

‘the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work’.

10. Applying the aforesaid principles of law espoused by Supreme Court of India to the facts of the present case, no case is made out to cause interference in the impugned order in exercise of Writ jurisdiction of this Court under Article 226 of the Constitution of India.

11. Hence, Writ Petition stands dismissed.

12. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE