



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.2461 OF 2024

Shashikant Madhavrao Gade,

... PETITIONER

**VERSUS**

1. The State of Maharashtra  
through its Secretary,  
Water Supply and Sanitation Dept.,  
Mantralaya, Mumbai
2. The Collector, Ahmednagar,
3. Sachin Bhagwanrao Dabhade

... RESPONDENTS

...

Advocate for petitioner : Ms. P.S. Talekar i/b. M/s. Talekar and Associates  
AGP for respondent Nos.1 and 2 : Mr. P.P. Dawalkar  
Advocate for respondent No.3 : Mr. V.D. Hon, Senior advocate i/b.  
Mr. Ashwin V. Hon

...

**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**Reserved on : 09.07.2024  
Pronounced on : 18.07.2024**

**JUDGMENT ( PER : MANGESH S. PATIL, J.) :**

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent Nos.1 and 2. Learned Senior advocate Mr. V.D. Hon instructed by Mr. Ashwin V. Hon waives service for respondent No.3. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By this writ petition under Article 226 of the Constitution of

India the petitioner is challenging the work order dated 21.02.2024 issued by respondent No.2 to respondent No.3 who was the lowest bidder and instead directing the former to issue it to the petitioner who was the second lowest bidder.

3. It was a tender notice published by respondent No.2 – Collector on 11.01.2024 for supply of water by tankers in district Ahmednagar during the year 2024. The petitioner as also respondent No.3 submitted their offers. The petitioner raised objection to the bid of respondent No.3, whereupon, the Collector called upon respondent No.3 to comply. The financial bids were opened even when respondent No.3 was still non-compliant, the work order was issued to him.

4. The learned advocate for the petitioner Ms. Talekar would advert our attention to the tender notice. It was a contract for a year for supply of drinking water by tankers throughout the district. The requirement as per the tender notice was to supply 100 tankers. As per condition No.9 the bidders were required to have experience of three years of similar work to Government or Local Self-Government body. She would submit that respondent No.3 was not compliant in this respect. He had merely produced a certificate issued by headmistress of Jawahar Navodaya Vidyalaya (**Exhibit-D**) which was neither a Government office nor was it a Local Self-Government body. In spite of this condition being vital, it was relaxed. Similarly, one of the vehicles was a bowser when the requirement was to supply tankers. Even this was a deviation from the

essential condition of the tender notice, still it was relaxed. As against this the petitioner was fully compliant with all the essential conditions. Merely because respondent No.3 was 'L-1' the conditions could not have been relaxed. She would rely upon **B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Ors.; (2006) 11 Supreme Court Cases 548**. She would submit that parameters have been laid down to assess which of the tender conditions would be categorized as essential and which are merely ancillary or subsidiary. It also lays down the circumstances when it is open for an employer being a best judge to not to accept the 'L-1' bidder. The decision taken by respondent No.2 to award the contract to respondent No.3 is arbitrary and illegal.

5. The learned AGP referring to the affidavit-in-reply would submit that there has been no illegality in accepting bid of respondent No.3. Appropriate explanations were given which were found to be reasonable. The respondent No.3 had submitted the experience certificate issued by the Headmistress of Jawahar Navodaya Vidyalaya which is an autonomous body under the Ministry of Education, Government of India. Respondent No.3 had submitted communication issued by the Deputy Regional Transport Officer, Beed for appropriate correction in the body type of the vehicle in respect of the bowser vehicle and merely its approval was awaited. After due verification of such communication and after being satisfied that the financial bids were opened. Respondent No.3 was the lowest bidder and the impugned work

order was issued by the Water Supply Committee and prayed to dismissed the petition.

6. The petitioner controverted the stand of respondent Nos.1 and 2 in their affidavit-in-reply by filing a rejoinder. He strongly controverted the stand in the affidavit-in-reply in respect of experience certificate issued by the Headmistress of Jawahar Navodaya Vidyalaya which is neither a Government nor a local self-government body. It is merely a school. Even it was contended that the change in the type of vehicle was also not effected by the time the rejoinder was filed. Some of the vehicles provided by respondent No.3 were trailers and not tankers. Even the subsequent performance by respondent No.3 was deficient in many respect. Respondent No.2 – Collector had to issue notice dated 06.03.2024 for the delay in providing water by tankers to Karjat and Parner talukas and respondent No.2 – Collector had to again issue show cause notice proposing a drastic action.

7. Respondent No.3 contests the petition by filing a separate affidavit. He would deny the allegations of being non-compliant with the conditions regarding the experience and the type of vehicle. He would repeat the stand of respondent Nos.1 and 2 in their affidavit.

8. The learned Senior advocate Mr. Hon for respondent No.3 would submit that the power of this Court to undertake judicial review in tender matters is limited. It cannot substitute the decision taken by respondent No.2 consciously. Whatever shortcomings were pointed out

were duly complied with, with which respondent Nos.1 and 2 were satisfied. Subsequent deficiencies in performance of respondent No.3 under the contract is not relevant. Although the tenure of the contract is of one year it was essentially to meet scarcity of water during summer which is already over. The initial period up to 30.06.2024 is already over. Recently the Collector, by the order dated 03.07.2024, has extended the contract up to 31.07.2024 and in effect the purpose of floating the tender and the contract is subserved. He would cite the decision in the matter of **Jagdish Mandal Vs. State of Orissa and Ors.; (2007) 14 Supreme Court Cases 517.**

9. We have considered the rival submissions and perused the papers. As can be seen from the pleadings, it is admitted that initially respondent No.3 had not submitted the experience certificate but subsequently produced a certificate issued by the Headmistress of Jawahar Navodaya Vidyalaya, genuineness of which has not been disputed by the petitioner.

10. The learned advocate for the petitioner submits that Jawahar Navodaya Vidyalaya being a residential school, its requirement could be very less or limited to barely a tanker or two in a day. When the tender notice was in respect of supply of drinking water by tankers throughout the entire Ahmednagar district, it would be unimaginable that any such experience of supplying water to a residential school could have been in contemplation.

11. However, the fact remains that the requirement according to the tender notice was of having experience of supplying water to Government or Local Self-Government bodies. It was not containing any stipulation regarding quantity. Meaning thereby, condition No.9 being relied upon by the petitioner did not stipulate the quantity of work performed to demonstrate the experience. It merely expected that the bidder should have minimum of three years experience in supplying water to a Government/Local Self- Government body.

12. The stand of respondent Nos.1 and 2 in the affidavit-in-reply that Jawahar Navodaya Vidyalaya is an autonomous body under the Ministry of Education, Government of India, has not been controverted by the petitioner in the rejoinder. Veracity or otherwise of the certificate (**Exhibit-D**) has also not been disputed. Ms. Talekar would argue that the certificate is not supported by any document and expressly mentions that no such record was available and should have put respondent No.2 on guard. In our considered view this is irrelevant. He had found such experience certificate issued by an autonomous body established and working under the Ministry of Education, Government of India, as a substantial compliance. It was within his discretion as an employer to treat this as fair compliance of condition No.9.

13. Similarly, as far as the type of vehicle offered by respondent No.3 being bowser and not a tanker, he had submitted a certificate issued by the RTO about steps being taken for converting the record suitably in

the records of that office. It was verified and respondent No.2 found it to be satisfactory. Again, respondent No.2 being the employer, his satisfaction cannot be said to be susceptible to judicial review, more so, when there are no allegations in the petition about any *mala fides* or bias on his part.

14. When it was a contract for supply of water through tankers with a further requirement of having 100 such vehicles, even if the stand of the petitioner that one of the vehicles was in fact a bowser and not a tanker, and respondent No.2, on the basis of the explanation offered by respondent No.3 in that regard, being satisfied, in our considered view, it would not be breach of the principles laid down in the matter of **B.S.N. Joshi** (supra).

15. One would be guided by the principles laid down in the matter of **Jagdish Mandal** (supra). Culling down the principles by referring to **Sterling Computers Ltd. Vs. M and N Publication Ltd.**; (1993) 1 SCC 445, **Tata Cellular Vs. Union of India**; (1994) 6 SCC 651, **Raunaq International Ltd. Vs. I.V.R. Constructions Ltd.**; (1999) 1 SCC 492, **Air India Ltd. Vs. Cochin International Airport Ltd.**; (2000) 2 SCC 617 and **Assn. of Registration Plates Vs. Union of India**; (2005) 1 SCC 679, and importantly **B.S.N. Joshi** (supra), in paragraph No.22, in **Jagdish Mandal**, it has been observed under:

*“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is*

*made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

*(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*

*or*

*Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;*

*(ii) Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”*

16. In the light of these observations, in our considered view, the

act of respondent No.2 in awarding contract to respondent No.3 was within the purview of his powers being an employer and this Court cannot interfere in it under Article 226.

17. As far as the allegations regarding inability of respondent No.3 to discharge his obligation under the contract awarded to him, in our considered view, it would not be a relevant factor to be considered by the Court. It would be a matter of contractual obligation in respect of the contract between respondent Nos.2 and 3 and the petitioner would have no locus to challenge the award of contract based on such subsequent dispute between them *inter se*, touching performance under the contract.

18. Ms. Talekar's submission that the subsequent ill-performance is demonstrative of the arbitrariness in awarding the contract and demonstrating its hazardous consequences, according to us is an emotional argument. So long as there are no allegations about any *mala fides* attributable to respondent No.2, even if it is assumed for the sake of arguments that it was an error committed by him and the subsequent ill-performance by respondent No.3 demonstrates the consequences, that cannot be a legitimate ground to question the award of contract to respondent No.3.

19. The writ petition is dismissed.

**[ SHAILESH P. BRAHME ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**