



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO. 4855 OF 2023

M/s. Gopal Construction Government
Registration Contractor,
Through its Assistant,
Balasaheb s/o Eknathrao Naiknaware,
Age : 37 years, Occu. Business,
R/o. Balbhim Niwas, Beed Road, Majalgaon,
Tq. Majalgaon, Dist. Beed.

...Petitioner

Versus

- 1] The State of Maharashtra,
Through its -
Principal Secretary,
Public Works Department,
Mantralaya, Mumbai.
- 2] The State of Maharashtra,
Through its -
Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai
- 3] The Chief Executive Officer,
Zilla Parishad, Beed.
- 4] The Executive Engineer,
Rural Water Supply Division,
Beed, Dist. Beed.
- 5] Jalindar s/o Prlhadrarao Davkar,
Age : 55 years, Occu. Business,
R/o. Dist. Beed, Gorakshnath Home,
Shivneri Colony, Rajiv Gandhi Chowk,
Beed.

....Respondents

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Mr. N. L. Jadhav h/f Mr. V. H. Salunke – Advocate for the Petitioner
Mr. M. M. Nerlikar – Addl. G.P. for Respondent Nos. 1 and 2

Mr. H. P. Jadhav – Advocate for respondent nos. 3 and 4

Mr. P. P. Kothari – Advocate for respondent no. 5

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**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.**

Reserved on : 19TH DECEMBER 2023

Pronounced on : 10TH JANUARY 2024

JUDGMENT [Per : Neeraj P. Dhote, J.] : -

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties. Perused the papers.

2. The Petitioner, by way of this petition filed under Article 226 of the Constitution of India, prays for disqualification of Respondent No. 5/successful bidder from the e-tendering process and solicits a direction to the Respondent Nos. 3 and 4 to qualify the Petitioner-firm in financial bid.

3. It is submitted by the learned advocate for the Petitioner that Respondent Nos. 3 and 4 have initiated e-tendering process in respect of the works under the 'Water Supply Scheme' within the jurisdiction of Zilla Parishad, Beed. The Petitioner and Respondent No. 5 along with the other contractors responded to the e-tendering process. Respondent No. 5 was declared qualified for the work, being the lowest bidder i.e. L1. As Respondent No. 5 failed to submit the required

documents within the stipulated time, Respondent Nos. 3 and 4 ought to have disqualified him and Petitioner should have been awarded the contract. It is submitted that the Respondent Nos. 3 and 4 favoured the Respondent No. 5 by flouting the guidelines and, therefore, the Petition be allowed.

4. Respondent Nos. 3 and 4 have filed reply denying the contentions of the Petitioner. It is submitted by the learned advocate for the Respondent Nos. 3 and 4 that all the process pursuant to the e-tendering process is undertaken with transparency and only after the Respondent No. 5 completed the required formalities, the work order has been issued in his favour. It is submitted that the Respondent No. 5, who is lowest bidder (L1), has started and completed 25% of the work under the tender. It is submitted that there is no merit in the petition and it be dismissed.

5. Respondent No. 5 tendered affidavit denying the Petitioner's contention. It is averred that Respondent No. 5 submitted the required documents on 03.04.2023. The mail received by him from the authorities on 26.03.2023 was incomplete and on that day he was out of station, however, he personally approached the office of respondent-authorities and submitted the CDR and bond and thereafter the work

order was issued in his favour. It is submitted that the Petition lacks merit and it be dismissed.

6. The subject matter of the petition is the Tender of the work under 'Water Supply Scheme' i.e. Jal Jeevan Mission. The law in respect of judicial review and interference in the matters related to tender is well settled. There are catena of judgments of the Hon'ble Apex Court of India in that regard. Useful reference can be made to the judgment in the case of **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651** and **N. G. Projects Limited Vs. Vinod Kumar Jain and Ors** reported in **AIR 2022 SC 1531**, and recent judgment in the case of **Tata Motors Limited Versus Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and others** reported in **2023 AIR (SC) 2717; 2023 DGLS(SC) 598**. Perusal of the judgment in Tata Motors would show that it was in respect of a tender floated by BEST for supply, operation and maintenance of the electric buses. It is held "*this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry.*"

6.1. It is further observed, “the courts must realise their limitations and the havoc which needless interference in commercial matters can cause. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.”

6.2. It is also observed “ordinarily, a 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 unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest”.

6.3. It is further observed, “even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere”.

6.4. By referring to the judgment in the case of **Jagdish Mandal v. State of Orissa and others**, reported in (2007) 14 SCC 517, it was

further held *“while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters”* and further observed, *“if the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out”*.

7. Coming to the case in hand there is no dispute that the Respondent No. 5 was the lowest bidder i.e. L1 and the Petitioner was L2. The papers on the record show that Respondent No. 4 under the communication dated 26.03.2023 had asked Respondent No. 5 to submit certain documents till office hours of 28.03.2023, failing which, it was to be presumed that he had nothing to say and the L2 would be called for discussion and will be given the work order. The papers show that the Petitioner had written to the Respondent No. 3 vide letter dated 29.03.2023 that, as the L1 had failed to comply with the terms and conditions, he be considered for allotment of the work. Petitioner had also addressed another letter dated 05.04.2023 to the Respondent No. 3 and shown willingness to execute the work at the rates offered by the L1. The papers further show that vide communication dated 06.04.2023, the Petitioner had written to the Respondent No. 3 that it has deposited the CDR, DD and Bond on 05.04.2023 and requested not

to accept the documents of L1. The papers further show that on 06.04.2023, a meeting was convened by Respondent Nos. 3 and 4 for the subject matter. Copy of minutes of meeting is annexed to the affidavit-in-reply filed by Respondent Nos. 3 and 4 as Exhibit - 'R-2' [Page No. 70 of the petition]. On going through the same, it is seen that Respondent Nos. 3 and 4 considered Petitioner's communications dated 29.03.2023 and 05.04.2023 and noted that Respondent No. 5 (L1) had deposited the documents on 03.04.2023 and there was no communication by the office of Respondent Nos. 3 and 4 to the L2 that L1 had not deposited the CDR, DD and bond and for that reason, the L1 bidder was given first preference and the Respondent No. 4 was directed to issue the work order.

8. From the above discussion, it is clear that Respondent Nos. 3 and 4, who were the authorities, have considered the communications / representations of the Petitioner and proceeded further in issuing the work order to the Respondent No. 5, who admittedly was the L1 and who had submitted the required documents prior in point of time than the Petitioner. It is clear that though it is seen that by communication dated 26.03.2023, Respondent No. 5 was required to make compliance till 28.03.2023 and in fact he made the compliance subsequently does not warrant interference by this Court for

want of any material to show that the Respondent – authorities acted *mala fide*.

9. Under such circumstances, when the process appears to be carried out in a transparent manner as is evident from the record, we do not find this case to be of such a nature warranting interference. Thus, keeping in view the aforementioned settled legal position, we proceed to pass the following order:

ORDER

[i] Writ Petition is dismissed.

[ii] Rule is discharged.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE