

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.269 OF 2016

Haridas s/o Pralhad Ghumare,
age: 41 years, Occ: Contractor,
R/o Pargaon (Ghumara),
Tq. & District Beed.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary,
Rural Water Supply and
Sanitation Department,
Mantralaya, Mumbai.

02 The Collector, Beed,
Tq. & District Beed.

Respondents

Mr.V.D.Salunke, advocate for the petitioner.
Mr.A.B.Girase, Government Pleader for Respondents.

**CORAM : R.M.BORDE &
A.I.S.CHEEMA, JJ.
DATE : 08th February, 2016**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner is objecting to the decision of the Collector, Beed, dated 29.12.2015, directing cancellation of e-tender process initiated in pursuance to the Notification issued on 09.10.2015; and directing issuance of fresh e-tender notice.

3 The Collector has issued e-tender notice on 09.10.2015

calling online bids for transportation and supply of drinking water in the district. The maximum rates prescribed under the tender notice were Rs.158/- per day per metric ton and Rs.2/- per metric ton per kilometer. Petitioner, along with 14 other bidders, participated in the tender process. Petitioner quoted rate at the rate of Rs.89/- per metric ton per day and Rs.1.95 per ton per kilometer for supply of drinking water. During tender process, out of 15 bidders, only 8 bidders were qualified and 7 bidders were held ineligible to participate in the process. After comparative analysis, amount quoted by the petitioner was found to be average lowest amongst both categories, i.e. at the rate of Rs.181.98 and as such, it was decided to call upon the petitioner for further negotiations. Opinion of the State Government was solicited in that regard by the Collector.

4 In the meantime, one of the participants, namely Mr.Ramdas Hange lodged a complaint to the State Government contending therein that he is the lowest bidder amongst all the participants in the category of per metric ton per kilometer rate. The rate quoted by the objector in the aforesaid category was Rs.1.36, whereas, rate quoted by the petitioner is at Rs.1.99. So far as rates quoted for one metric ton unit per day by the petitioner is Rs.89/-, whereas, rate quoted for the aforesaid category, by the objector, was at the rate of Rs.106/-. After evaluating comparative merit of the offers of all the tenderers, though petitioner was found to have quoted lowest average rate i.e. Rs.181.98, whereas, objector Ramdas had quoted @ Rs.214.72, still the State Government directed reconsideration of the offer. The Collector, though it was revealed that offer of Ramdas Hange was not competitive, called

him along with petitioner for negotiations. The Collector, on his own, quoted rate at lower level i.e. Rs.89/- per unit per day and Rs.1.45 per unit per kilometer and inquired with both the participants i.e. petitioner and objector Ramdas, as to whether they are ready to supply water at the rate quoted above. The petitioner has given final offer on 02.12.2015 agreeing to supply water at Rs.89/- per unit per day and Rs.1.95 per unit per kilometer rate. The offer of the petitioner was not accepted and the Collector took a decision on 29.12.2015 to invite fresh tender process.

5 An affidavit-in-reply has been presented on behalf of the Collector justifying his actions. In fact, it should be noted that it was not open for the Collector to prescribe the rate and ask the participants to agree with the rate quoted by him. It is beyond doubt that rate quoted by the petitioner was lowest amongst all the participants and though objector Shri Ramdas Hange was found to be at Sr.No.4, on consideration of comparative merits, still the Collector insisted his participation in the process of negotiations. The allegations made by the petitioner that complainant Ramdas Hange prevailed upon Respondent-authorities to consider his offer though same was not competitive, appears to be *prima facie* acceptable. It also does appear that the complainant was one of the suppliers of drinking water and was awarded contract during the year 2009-2010 and it was noticed that he had claimed excess amount to the tune of Rs.8,75,834/- and in pursuance to the notice calling upon him to deposit the amount, he deposited Rs.6,38,364/- with the State Government on 21.10.2012. A sum of Rs.45,000/- was revealed to have been paid in excess to Shri

Hange by Panchayat Samiti Shirur. A Criminal Complaint was also lodged at Patoda Police Station against him in pursuance to which crime came to be registered. Looking to the previous record of objector Shri Ramdas Hange, the Collector ought not to have called him for negotiations.

6 During pendency of petition, fresh e-tender notice was issued in respect of supply of drinking water. This Court, by virtue of order passed on 02.02.2016, permitted the petitioner to participate in the fresh tender process and at the same time, the Collector was restrained from disclosing offers received during e-tender process. On consideration of application tendered by the Collector, this Court, permitted the Collector to notify offers received during fresh e-tender process and accordingly, the Collector has submitted details in respect of offers received by him. It appears that four tenderers were found qualified during fresh e-tender process and amongst them, petitioner, who was permitted to participate in the e-tender process, is found to be lowest bidder. It is, thus, clear that in both the tender processes, petitioner is found to be lowest bidder.

7 It is noticed that petitioner offered rate of Rs.149/- per day per metric ton and Rs.1.89 per unit per kilometer. The rate offered by the petitioner, during second round of tender process, appears to be on higher side, however, amongst the participants, he is lowest bidder. Petitioner was asked as to whether he is willing to perform his obligations and supply drinking water at the rate quoted by him to the Collector on 02.12.2015, i.e. Rs.89/- per day per Metric Ton and Rs.1.95 per metric ton per kilometer, petitioner

has expressed his willingness to perform the contract at the rate quoted by him on 02.12.2015. We notice that acceptance of offer of petitioner at the rate quoted by him on 02.12.2015 is surely in the interest of the State. The Collector was not legally justified in interfering with the tender process and cancelling earlier tender process. There was also no justification for the Collector to initiate fresh e-tender process, which was made subject to the decision of the instant petition, by virtue of the orders passed by us.

8 In view of the facts stated above, since offer made by the petitioner on 02.12.2015 is competitive and since he has agreed to supply water at the rate quoted by him to the Collector, by a communication dated 02.12.2015, we direct Respondent No.2-Collector to accept offer of the petitioner contained in the aforesaid communication and addressed to him i.e. the Collector and issue him work order forthwith.

9 Rule is accordingly made absolute in above terms. There shall be no order as to costs. Pending Civil Applications do not survive and stand disposed of.

A.I.S.CHEEMA
JUDGE

adb/wp26916

R.M.BORDE
JUDGE