IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2631 OF 2015

Devashish Construction JV
Having its office at
Devashis Construction Company,
47, Jaivishwabharati Colony,
Opp. Jain Sweets Marg, Aurangabad,
Through JV representing Constituted
power by Shri Aashis Shriniwas Zanwar,
Age : 36 years, Occu. : Business,
R/o as above. .. Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Irrigation Department,
Mantralaya, Mumbai.

2. Tapi Irrigation Development
Corporation, Jalgaon Through its
Executive Director, having its
office at "Sinchanbhavan" Near
Aakashwani Chowk, National
High way No. 6, Jalgaon 425 001.

3. The Chief Engineer,
Tapi Irrigation Development
Corporation, Jalgaon.

4. The Superintending Engineer,
Tapi Irrigation Development
Corporation, Jalgaon.

5. The Executive Engineer,
Tapi Irrigation Development
Corporation, Jalgaon. .. Respondents

Shri Satish M. Godsay, Advocate for the Petitioner.
Shri S. G. Karlekar, A.G.P. for the Respondent No. 1.
Shri Suresh D. Dhongade, Advocate for Respondent Nos. 2 to 5.

CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.
DATE : 25TH FEBRUARY, 2016.

ORAL JUDGMENT (***Per S. V. Gangapurwala, J.***) **:-**

. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

2. Mr. Godsay, the learned counsel for the petitioner submits that, the respondent No. 2 floated tender notice for the purpose of detailed survey and investigation of Nar Par Auranga Ambika Girna Valley Link Project and preparation of DPR District Nashik. The tender process was E-tendering process. The petitioner filled in the tender on 13.02.2015. The same was to be opened on 22.02.2015. The learned counsel submits that, the tender of the petitioner was rejected only on the ground that the petitioner did not get the Joint Venture Agreement (for short "J.V.A.") approved prior to the filling in the tender. According to the learned counsel, the tender document was filled in along with all attending documents. According to the learned counsel the term of the tender that the J.V.A. shall be got approved from

Tapi Irrigation Development Corporation is not mandatory term and same is not also in consonance with other terms of the said tender. As per the note appended thereto, there would be no pre-qualification. According to the learned counsel, if there is no pre- qualification, then in that case, no question arises of getting J.V.A. approved prior to filling in the tender.

3. The learned counsel further submits that, as per Clause 1.25(**c**) of the tender notice, in case of Joint Venture the sponsoring firm has to submit complete information and identify the lead firm. It would be necessary for Joint Venture to establish to the satisfaction of Committee that the Venture has been made practical, workable and legally enforceable arrangements amongst the parties. The learned counsel submits that, the said terms of the tender are also not in conformity with Government Resolution dated 18.10.2014 which specifically lays that, technical and financial bids would be opened simultaneously and no separate committee is to be appointed. All authority of evaluation would be with the authority accepting the tender. The learned counsel submits that, the petitioner had submitted J.V.A. along with tender submitted through E-tender process that is on line process. The respondents could have very well evaluated said J.V.A. and could have sent it for approval. The job of the petitioner is to submit J.V.A. to the office of respondents and it is for the office of respondents to approve the

same. The learned counsel further submits that, even J.V.A. was sent through courier, which is served in the office of respondents on 16.02.2015, however, there is overwriting on the acknowledgment stating that it is served on 26.02.2015. According to the learned counsel, affidavit of responsible person of courier has been filed and there is no denial for the same on the part of respondents. Mr. Godsay, the learned counsel further submits that, now as tenders are opened, it would be seen that, tender of the petitioner is at much lower rate, than other tenders.

3. Mr. Dhongde, the learned counsel for respondents/Corporation submits that, it is not case that on 16.02.2015 the J.V.A. was served upon respondents. The same was served on 26.02.2015. The acknowledgment is in the custody of the petitioner and its courier. If at all there is overwriting, it is at the behest of the petitioner and in the office of the petitioner or its courier. According to the learned counsel, if it would have been received on 16.02.2015, then the respondents could have processed the same, however, it was received after opening of tender and as such, said J.V.A. could not be got approved and tender condition could not be satisfied. The condition in the tender about J.V.A. to establish to the satisfaction of the committee about J.V.A. being made practical, workable and legally enforceable is included by mistake. There is no committee constituted and the J.V.A. is to be got approved from the office of

the Chief Engineer.

4. The learned counsel further submits that, the note states that, only post qualification is to be evaluated. The respondents have filed affidavit on 22.02.2016 stating that, the time limit for E-tender was seven months. Already one year has lapsed. The work which is sought to be done vide the said tender is necessary to be completed expeditiously. It is further stated in affidavit that, if, the Court is of the opinion to cancel the tender notice dated 09.01.2015, liberty be given to respondents to publish fresh tender notice to complete the work.

5. We are not concerned with the rates quoted by the respective parties. Present petition is filed only on the premise that the tender of the petitioner is rejected on the ground that J.V.A. was not got approved before filling in the tender.

6. No doubt, clause No. 1.25 (a)(iv)(ii) lays down that, the Joint Venture deed shall be got approved from the Tapi Irrigation Development Corporation before submission of tender. In the present case, the petitioner had filled in tender on 13.02.2015. The said Joint Venture deed was not submitted prior to the said date. However, as was submitted by respondents, that, if it would have been received earlier i. e. on 16.02.2015 as was contended by the petitioner, then the same could have been

processed. This would go to show that, the J. V. A. could have been processed for approval, if it would have been received prior to opening of the tender. In the present case, the J.V.A. was part of tender document filed on 13.02.2015, which was submitted online. There was no impediment for respondents to consider the same.

7. Be that as it may, even the tender condition appears to be some what ambiguous in the sense that, Joint Venture has to establish to the satisfaction of the Committee that, Venture has been made practical, workable and legally enforceable. However, at the same time, it is admitted by respondents that, no such Committee is constituted. As such, we fail to understand the reason for J.V.A. to be got approved while submitting the tender document. It does not state as to who would approve the same. Be that as it may, the J.V.A. was part of tender document. Further the note says there would be no pre-qualification.

8. There is another facet to the matter also. The tenders were floated and opened in February 2015. The period of tender was seven months. More than a year has been lapsed. The cost of the work may have undergone change. Even affidavit is filed stating that work has to be completed expeditiously and if the tender notice is cancelled liberty be given to publish fresh tender notice. It also appears that, said condition in the tender run counter

with the Government Resolution dated 18.10.2014. It is submitted that, now in respect of other works, respondents have issued tenders by correcting said mistake.

9. Be that as it may, taking cumulative effect and considering the time gap, it would be appropriate for respondents to issue fresh tender. The impugned order disqualifying the petitioner from the tender process is quashed and set aside. However, considering the time lapsed, it would not be proper to direct the respondents to consider the petitioner in the said tender process which was a year back. The respondents/corporation shall issue fresh tender for the said purpose.

Rule accordingly made absolute in above terms. No costs.

Sd/-	**Sd/-**
[A. M. BADAR, J.]	**[S. V. GANGAPURWALA, J.]**

bsb/Feb. 16