

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5669 OF 2015

Dr. Madhusudan Manikrao Kendre

.. **Petitioner**

Versus

The State of Maharashtra,
 Through its Principal Secretary,
 Rural Development and Water Conservation
 Department, Mantralaya, Mumbai – 32
 and others

.. **Respondents**

Shri Y. B. Bolkar h/f Shri Pralhad D. Bachate, Advocate for
 Petitioner.

Smt. A. V. Gondhalekar, Addl. G. P. for Respondent Nos. 1, 2 and 4.
 Respondent No. 3 served.

Shri P. R. Katneshwarkar, Advocate for Respondent No. 5.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.

DATE : 3RD AUGUST, 2016.

PER COURT :-

1. Mr. Bolkar, the learned counsel for the Petitioner submits that, the tender was floated by Respondent No. 1 for construction of Banwas C.N.B. 1,2,3, Pokharni Devi C.N.B. 1,2 and Wadi (Bk.) C.N.B. 1,2, Taluka – Palam, District – Parbhani. The Respondent No. 5 alongwith said persons had filled the tender.

2. One of the important clause of the tender is that the digital signature should appear on each and every page of the tender being filled in. Sub-clause “c” of clause “16” of the tender specifically mandates digital signature and if, the digital signature mismatches or digital signature expires the same would result in invalidation of the tender. Though, the tender of Respondent No.

5 did not contain the digital signature, still to favour Respondent No. 5 the said condition has been relaxed subsequently by the Government. The terms of the tender could not have been changed after the tenders are floated and the tenderers have participated in the said tender. According to the learned counsel, the Rules of the game cannot be allowed to be changed after the game is played. The learned counsel submits that, the commercial bid could not have been opened. Only because Respondent No. 5 has quoted the lowest rate that could not have been the ground to relax the said condition. Though subsequently the work is carried out the same is substandard. The Petitioner be given the liberty to challenge the same also.

3. Mr. Katneshwarkar, the learned counsel appears for Respondent No. 5 and submits that, Respondent No. 5 was the lowest bidder. The hard copy was also given and subsequently signatures were provided. The said objection was a technical objection and was not a fundamental term of the tender.

4. The learned A. G. P. submits that, as per the Maharashtra Public Works Manual, para 233 the Government has the power to condone the departure from the Rules of the Contract. The Executive Committee has relaxed the condition of digital signature and after reviewing it has given sanction to the said tender Nos. 3766 and 3767 the procedure has been followed. After the work order is issued the work is also completed. The total 5 works were allotted in tender No. 3767, the same are completed and in respect of tender No. 3766 out of 7 works, 5 works are already completed. According to Respondent No. 5 remaining 2 works are also completed.

5. We have considered the submissions.

6. It is a fact that once the terms and conditions are laid down in the tender the fundamental terms cannot be allowed to be deviated. The question would be whether the said condition was fundamental condition. We need not go into the said aspect as the total work which was allotted by the said tender has already been completed. In light of that, the prayer made in the writ petition staying the said work therefore has become infructuous and such other prayers made from prayer clause "B" to "C" have become infructuous.

7. In light of that, the relief claimed has become infructuous. We are not considering the case on the merits.

8. If, the Petitioner has any grievance with the quality of the work done the same would be separate cause of action which the parties can agitate in appropriate proceedings. The Petitioner was directed to deposit an amount of Rs. 50,000/- vide order dated 8th June, 2015, the same is deposited by the Petitioner. Mr. Bolkar, the learned counsel for the Petitioner on instructions states that, the Petitioner is ready to give Rs. 25,000/- to the High Court Bar Association Library.

9. Considering the above, the Petitioner is allowed to withdraw the amount deposited by the Petitioner and Rs.25,000/- as suggested by the Petitioner from the said amount be paid to the High Court Bar Association Library.

10. The Writ Petition is disposed of. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]