

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****Writ Petition No. 1500 of 2016****[M/s. Shrikant Construction, Pulgaon Vs. Municipal Council, Pulgaon]**

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Shri F.T. Mirza, Adv., for the petitioner.
Mr. Abhay Sambre, Adv., for the respondent sole.

**CORAM : SMT. VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.**

DATE : 27th April, 2016

By this Writ Petition, the petitioner challenges the action on the part of the respondent - Municipal Council of floating a fresh tender for the work of construction of concrete roads and culverts dated 16th February, 2016. The petitioner seeks a direction against the respondent - Municipal Council to issue the Work Order in favour of the petitioner in pursuance of the first tender floated on 9th December, 2015.

In pursuance of the tender floated by the Municipal Council on 9th December, 2015, the petitioner had applied for allotment of work of construction of concrete roads and culverts. As per the Tender Notice, an earnest amount of two per cent of the amount of estimated cost was required to be deposited. The petitioner deposited an amount of Rs. 74,300/- as per the

Tender Notice. The financial as well as technical bids were opened and it is the case of the petitioner that the bid of the petitioner was lowest. According to the petitioner, the petitioner had offered to perform the contract at -16.05% of the estimated rate. Since the petitioner had offered the financial bid at -16.05 per cent of the estimated cost, it appears that the Municipal Council directed the petitioner to deposit ten per cent of the estimated cost towards the Security Deposit. The Petitioner did not pay the amount as per the demand of the Municipal Council. According to the petitioner, the rules of the game could not have been changed by the Municipal Council after the tenderers offered their bids. According to the petitioner, only two per cent amount of the estimated cost was required to be deposited, and, since the petitioner had deposited the same, the contract ought to have been awarded in favour of the petitioner. Since the petitioner failed to pay ten per cent of the estimated cost, as desired by the Municipal Council, the Municipal Council issued a fresh tender on 16th February, 2016. The petitioner has challenged the action on the part of the Municipal Council of cancelling the process initiated in pursuance of the first tender dated 9th December, 2015. The petitioner has sought a direction to the Municipal Council to grant the Work Order to the petitioner in pursuance of the first tender dated 9th December, 2015.

The relief sought by the petitioner in terms of Prayer Clauses [a] and [b] cannot be granted in the circumstances of the case. Though the petitioner has not averred in the Writ Petition that the petitioner has again applied in pursuance of the second tender dated 16th February, 2016, it is fairly stated on a query made by the Court that the petitioner has also applied in pursuance of the Tender Notice dated 16th February, 2016. If that be so, the petitioner is estopped from challenging the second Tender dated 16th February, 2016. Since the petitioner has made only two prayers that the Tender Notice dated 16th February, 2016 is bad in law and that the Work Order should be issued in favour of the petitioner in pursuance of the first tender dated 9th December, 2015, both the prayers are liable to be rejected. After having participated in the tender process in pursuance of the second tender dated 16th February, 2016, the petitioner cannot turn around to challenge the same on the ground that he was the lowest tenderer in the process initiated by the first Tender Notice dated 9th December, 2015. If the petitioner really desired that the contract in terms of the first Tender should have been awarded in favour of the petitioner, the petitioner ought not have participated in the process initiated by the second Tender Notice dated 16th February, 2016. After having participated in the tender process initiated by the second Tender Notice, the petitioner cannot fall back and claim that the Municipal Council could not have floated the second Tender by illegally rejecting the lowest bid of the

petitioner. It is well settled that a challenge to the selection procedure cannot be made after participating in the selection process. Since the petitioner has submitted a bid in pursuance of the second Tender Notice dated 16th February, 2016, the petitioner cannot challenge the second Tender Notice on the ground that it was entitled to the allotment of the work order contract on the basis of the lowest bid offered in pursuance of the first Tender Notice.

In view of the aforesaid, we dismiss the Writ Petition with no order as to costs.

Judge

Judge

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