

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1725 OF 2016

M/s. A. G. Jagtap, Through its Partner Shri Atul Anandrao Jagtap

-vs-

The State of Maharashtra, through its Secretary, Dett.of Water Supply and others

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

Court's or Judge's Orders.

Mr. S.V.Purohit, counsel for the petitioner.
Ms Ritu Kaliya, AGP for the respondent Nos.1, 3 and 4.
Mr. P.P.Deshmukh, counsel for the respondent No.2.
Mr. V.N.Patre, counsel for the respondent No.5.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 03.08.2016.

By this writ petition, the petitioner challenges the e-tender, dated 08.02.2016. The petitioner seeks a direction to the respondent Nos.2 to 5 to issue a pre-qualification certificate to the petitioner in pursuance of the e-tender floated by the respondent No.2 on 31.07.2014. The petitioner seeks a declaration that the appointment of the respondent No.6 as a Project Management Consultant is illegal and arbitrary. The petitioner has sought a direction against the respondents to consider granting the tender to the petitioner, after issuance of the pre-qualification certificate.

It is stated on behalf of the petitioner that the prayers made by the petitioner in respect of the challenge to the e-tender notice dated 08.02.2016 and the declaration that the appointment of the respondent No.6 as Project Management Consultant is illegal would not survive, as the respondent Nos.2 to 5 and 7 have cancelled the e-tender, dated 08.02.2016 and the appointment of the Project Management Consultant is also set aside, during the pendency of this petition. It is stated that the prayer made by the petitioner in respect of issuance of a pre-qualification certificate to the petitioner, in pursuance of the tender, dated 31.07.2014 would only survive.

The petitioner had along with six others submitted the tender in pursuance of the e-tender dated 31.07.2014 for execution of work under the water supply scheme. It is stated that as per the said tender, dated 31.07.2014, only two tenderers were eligible, the petitioner being one of them. It is stated that the respondent No.2-Municipal Council passed a resolution for issuance of the pre-qualification certificates in favour of the two eligible bidders. It is stated that the said resolution was challenged before the Collector and the Collector upheld the challenge. It is stated that the Commissioner set aside the order of the Collector thereby reviving the resolution. It is stated that since during the pendency of the writ petition, the e-tender, dated 08.02.2016 is cancelled, a direction be issued against the respondent Nos.2 to 5 and 7 to issue the pre-qualification certificate to the petitioner in pursuance of the tender, dated 31.07.2014. According to the petitioner, it would be necessary for the respondent No.2 to take steps to give effect to all decisions and resolutions of the Municipal Council and since the Municipal Council had passed the resolution in the year 2014 to issue the pre-qualification certificate to the petitioner and the other bidder, it would be necessary for the Chief Officer to implement the said resolution.

Ms Ritu Kaliya, the learned Assistant Government Pleader appearing on behalf of the State Government, states that the Government has decided to implement the water supply schemes through the Maharashtra Jivan Pradhikaran and the process initiated in pursuance of the tender notice for the implementation of such schemes was cancelled. It is stated that a similar statement was made in this Court in a couple of writ petitions, one of them being Writ Petition No.1140 of 2016, wherein a statement was made by the Additional Government Pleader that the process initiated in pursuance of the tender notice for implementation of the water supply scheme was cancelled and the State has decided to get the work executed through the Maharashtra Jivan Pradhikaran. It is stated that on the statement made on behalf of the Government in the aforesaid writ petition, the writ petition was disposed of.

Shri P. P. Deshmukh, the learned counsel for the respondent-Municipal Council, submitted that the process initiated vide e-tender dated 31.07.2014 was cancelled by the Municipal Council for two reasons. It is stated that the Government has decided to cancel the tenders that were floated for the implementation of the works for the water supply scheme. It is stated that the tender was also liable to be cancelled, in view of the Maharashtra Municipal Account Code, 2013 and specially Rule 28 thereof that provides that at least three eligible bids should be received in respect of a tender and if they are not so received, the tender process is required to be cancelled by taking appropriate action. It is stated that in the instant case, there were only two eligible bidders and the Municipal Council has therefore, cancelled the process initiated in terms of e-tender, dated 31.07.2014.

On hearing the learned counsel for the parties, we find that the relief sought by the petitioner cannot be granted, in the circumstances of the case. The State Government has by a policy decision, decided to cancel all the tenders in respect of implementation of the works of water supply schemes and such a statement was made on behalf of the State Government in some matters that are decided by this Court. It would be necessary to refer to Writ Petition No.1140 of 2016 that was disposed of by accepting the statement made on behalf of the Additional Government Pleader that the process initiated in pursuance of a similar tender notice was cancelled, as the work was sought to be executed through the Maharashtra Jivan Pradhikaran. We find that the petitioner would have no right to seek the issuance of pre-qualification certificate, in pursuance of the e-tender, dated 31.07.2014, when the Government has cancelled the said tender. Also, we find that the Municipal Council was liable to cancel the process initiated vide e-tender, dated 31.07.2014, as only two bidders were found to be eligible. On a reading of the Maharashtra Municipal Account Code, 2013 and Rules 28, 30 and 31 thereof, it appears that the Municipal Council is not empowered to continue with the tender process where less than three eligible bids are received in response to the tender. Admittedly, in the instant case, only two bidders are found

to be eligible. We, therefore, do not find any fault on the part of the Municipal Council to cancel the tender process initiated, in pursuance of the e-tender, dated 31.07.2014. In the circumstances of the case, we do not find any merit in the submission made on behalf of the petitioner that it would be still necessary for the Chief Officer to give effect to the resolution of the Municipal Council, that was passed in the year 2014 by taking recourse to the provisions of Section 77 (1)(b) of the Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965.

Since we do not find any merit in the claim of the petitioner, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 06/08/2016