

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12271 OF 2016

Mr. Rajendra Vyankatrao Pawar

Petitioner

Versus

The Executive Engineer

Public Works Division, Dhule & others

Respondents

Mr.G.K. (Naik) Thigale advocate for the petitioner

Mr. A.R. Kale, AGP for Respondent No.1 to 3

Mr. A.S. Sawant advocate for respondent No.4

CORAM : R.M. BORDE &

K.L. WADANE, JJ

(Date : 30th March, 2017.)

PER COURT :-

1 The petitioner is objecting to the decision of acceptance of the tender offer of respondent No.4 by respondent Nos.1 to 3.

2 The petitioner contends that, respondent No.4 did not comply with the terms and conditions of the tender notice contained in paragraph No.1.4.6. It is contended that, the successful bidder does not have experience of similar type of work and of similar magnitude and no certificate as provided under the aforesaid clause was tendered.

4 In support of his contention, learned counsel for the petitioner placed reliance on the decision of the Honourable

Supreme Court in the matter of **Monarch Infrastructure (P) Limited Versus Commissioner, Ulhasnagar, Municipal Corporation & others** (2000 5 SCC 287).

4 In reply to the objection, it is stated by the respondent department that the term '*similar type of work*' does not mean the work of the same character and the condition is inclusive to assess the general ability of the contractor to carry out the work for which bids are invited. It is contended that, while registering a contractor with the Public Works Department, it is expected of a contractor to do all type of works including constructions of roads, bridges, dams, projects etc.. The contractor is issued a reregistration certificate only on considering the ability of a contractor to execute such type of works. The experts have certified the ability of respondent No.4 to carry out the work.

5 The decision taken by the experts, after assessment of the ability of the contractor, need not be interfered with in exercise of writ jurisdiction. It is not a matter of dispute that the financial bid offered by respondent No.4 is more competitive since he has quoted the rates below 19.25% of the tender offer, whereas, the offer of the petitioner is just 0.99% below the tender cost. In awarding the tender work to respondent No.4, the respondents

have taken into account the financial aspect. Since there is no element of public interest involved in the matter, the objection raised by the petitioner, need not be entertained. It would be appropriate to refer to the decision of the Supreme Court in the matter of **Raunaq International Ltd. v. I.V. R. Construction Ltd. & others** (1999 1 SCC 492). In paragraph No.11 of the Judgment, the Honourable Supreme Court has observed thus:-

" 11 When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers. "

6 In view of the fact that the tender work has been allotted to a competent bidder and after assessment his capacity to execute the work by the experts, we do not find that the public interest has been given go by. There is no reason to interfere in the dispute between the rival bidders in exercise of extraordinary jurisdiction under article 226 of the Constitution of India. In this view of the matter, the reliance placed by the petitioner in the matter of Monarch Infrastructures (P) Limited renders no assistance to the petitioner.

7 Writ petition is devoid of substance and hence stands disposed of.

8 No costs.

(K.L. WADANE, J)

(R.M. BORDE, J)