

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.314 OF 2018

M/s. S.A. Pathan
Through Proprietor
Shahid Abubkar Pathan,
Age-35 years, Occu:Business,
R/o-Nagardeole Phata,
Burhanagar Road,
Plot No.58/3-B, Ahmednagar.

...PETITIONER

VERSUS

Ahmednagar Cantonment Board,
Ahmednagar, Through
Chief Executive Officer,
Cantonment Board, Camp,
Bhingar, Ahmednagar.

...RESPONDENT

...

Mr. Shaikh Mazhar A. Jahagirdar Advocate
for Petitioner.

Mr.S.B. Yawalkar Additional Government
Pleader, for Respondent.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE : 10TH JANUARY, 2018

ORDER :

1. This Petition under Article 226 of the Constitution of India is filed with following substantive prayers:

"B) To quash and set aside the decision of Respondent dated 01-11-2017 thereby rejected the technical bid of the tender for different works which was invited by e tender notice No.ANR/MAIN/2017/18 Sr. No.7 dated 06-10-2017, by issuing writ of certiorari or any other writ of like nature,

C) To direct the respondent to accept the technical bid of petitioner offered in tender for different works which was invited by e-tender notice No. ANR/MAIN/2017/18 Sr. No.7 dated

06-10-2017, by issuing writ of mandamus
or any other writ of like nature."

2. It is the case of the Petitioner that Respondent Cantonment Board had invited tender for different works through e-tender notice bearing No.ANR/MAIN/2017/18 Sr. No.7 dated 6th October, 2017 on the website for nine different works. The works of civil natures regarding maintenance of different cantonment building, roads, drain lines etc. Prior to them present e-tender notice, the Respondent office had earlier issued two notices for the same work which were cancelled due to insufficient bids. It is submitted that the Petitioner had participated on all the three occasions and had paid the tender form fees of about Rs.75000/- which was non-refundable. The Petitioner also deposited Earnest Money Deposit of Rs.1,92,000/- which was refundable and had also furnished bank guarantee of Rs.1,42,000/-. The Petitioner submits that the tender was of four

stages namely, 1) Technical admission 2) Technical evaluation, 3) Financial evaluation and 4) A.O.C. As per the tender notice the participant had to submit the documents such as I) Registration Certificate of CPWD, PWD, MES Class PWD V. MES Class D, II) The completion/experience certificate of similar nature of work in Government Department during last three years, III) Copy of Permanent Account Number (PAN Card), IV) GST Number registered with State and Central Government, V) List of Technical Staff, VI) List of tool and machinery, VII) Information about work in hand.

3. It is the further case of the Petitioner that the Petitioner had complied with all the terms and conditions and submitted all the document required as per the tender notice. But the Respondent, during the technical evaluation, had rejected the bid of the Petitioner on the ground that "No experience certificate submitted from Government Department after registration."

Hence this Petition is filed by the Petitioner.

4. Learned counsel appearing for the Petitioner submits that the reason given by the Respondent for disqualifying the bid of the Petitioner is totally wrong because he had filed experience certificate and copies of work order and work done from different Government agencies such as Grampanchayats of various villages and also Municipal Corporation, Ahmednagar, where the petitioner had carried out the work of similar nature as given in the tender notice. Inspite of submitting the aforesaid documents, the Respondent has disqualified the Petitioner's bid at technical evaluation stage.

5. Learned counsel referring to the grounds taken in the Petition, further submitted that the Petitioner had quoted the tender below the rate and his tender would have been accepted being the lowest bid, but the Respondent informed that

whoever filed the tender below the estimated cost, will have to give bank guarantee and though the Petitioner had uploaded the bank guarantee along with e-form which would have been opened at the time of financial evaluation stage, but the Respondent demanded the said bank guarantee in physical form and it became known to the officers and other bidders that the Petitioner had filed the tender at the rate below estimated cost and therefore to disqualify the Petitioner, the officers of the Respondent Cantonment Board had conspired with other bidders and on false and wrong condition they have disqualified the Petitioner and did not qualify him to the financial evaluation stage. Learned counsel therefore submits that the Petition deserves to be allowed.

6. On the other hand, learned Additional Government Pleader submitted that while submitting the tender, the Petitioner has not annexed

experience certificate submitted from Government Department, which was the pre-condition and therefore the Respondent has rightly rejected the tender of the Petitioner. It is therefore submitted that the Petition deserves to be dismissed.

7. We have carefully considered the submissions made by the learned counsel appearing for the Petitioner and learned Additional Government Pleader appearing for the State. We have also carefully perused the grounds taken in the Petition and the documents placed on record. We have carefully perused the notice dated 6th October, 2017 inviting E-tender, wherein it was specifically stated that the concerned contractors, along with Technical Bid, were required to upload the documents mentioned in the said notice. One of the document mentioned in the said E-notice is "Experience Certificate of similar nature of work in any Government

Departments, during last three years". Admittedly, during the scrutiny of the technical bid of the tender submitted by the Petitioner, the Respondent authorities found that the Petitioner has not uploaded/filed the experience certificate submitted from Government Department, after registration. Accordingly, by the communication dated 14th November, 2017 the Chief Executive Officer, Ahmednagar Cantonment Board, has notified that the financial bid of the Petitioner was rejected as the Petitioner has not filed/tendered experience certificate submitted from Government Department. From the perusal of the entire documents placed on record, it appears that the Respondent authorities have rightly rejected the tender of the Petitioner for non-submission of relevant documents. The experience certificates submitted by the Petitioner were regarding the work carried out in various Grampanchayats. Thus, there is no arbitrariness in the action taken by the Respondent Authorities.

8. Further, upon careful perusal of the documents placed on record, it appears that the tender notice was published on 6th October, 2017, the decision of rejection of the Petitioner's tender was taken on 14th November, 2017 and challenging the said action of the Respondent, the present Petition is filed on 5th January, 2018. Thus, there is considerable delay on the part of the Petitioner in approaching this Court. Though it is submitted by the Petitioner that he had earlier filed Civil Suit before the Court of Civil Judge, Senior Division, Ahmednagar and after realizing that the Petitioner has approached before the wrong forum, the Petitioner had withdrawn the said suit and filed present Petition, the fact remains that by this time the tender process might have been completed and also the work might have been considerably completed by the contractor to whom the tender is allotted.

9. In that view of the matter, for the reasons stated herein above, we are not inclined to entertain this Writ Petition. Hence the Writ Petition stands rejected.

[S.M. GAVHANE, J.]

asb/JAN18

[S.S. SHINDE, J.]