

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6608 OF 2017

Rajendra Vyankatrao Pawar .. Petitioner

Versus

The Superintending Engineer Nashik
and others .. Respondents

Shri. G. K. Thigle and Shri. Rahul Motkari, Advocates for the Petitioner.

Shri. S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 2.

Shri. S. V. Bhosale, Advocate for Respondent No. 4.

Shri. S. B. Ghute, Advocate for Respondent Nos. 3 and 5.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATED : 04th April, 2018

PER COURT:

. The Respondent Nos. 1 and 2 floated tender on or about 13.04.2016 inviting offers for the construction of Cement Concrete Bandhara at Mondhale Pr. Utran (Pimpri). After opening the technical and financial bids the tender of Respondent No. 4 M/s. V. T. Pardeshi and sons is accepted. The petitioner was one of the participants in the tender

process. Aggrieved by the acceptance of tender of Respondent No. 4, the petitioner has filed the present petition.

2. The learned counsel for the petitioner submits that tender process has not been properly conducted. The essential documents required to be filed along with the tender were never submitted by the Respondent No. 4. He had only submitted photo copies of the documents. The same is not permissible as per clause 6 of the tender document. There is no provision of submitting the photo copies. Only verification is required to be done on the basis of documents submitted online. The Respondent Nos. 3 to 5 did not provide the original scanned documents of Vat Certificate, Vat Clearance Certificate, PTR Certificate, PTE Certificate, PTE Clearance Certificate and PTEC Clearance Certificate. Simple photo copies were provided which do not inspire confidence. The Respondent Nos. 3 to 5 violated clause VI of the tender document. The learned counsel submits that even the Respondent Nos. 3 to 5 failed to comply clause 11-B of the detailed tender notice. The details relating to concrete and steel quantity work undertaken as required is not provided. The learned counsel submits that as per clause 6- A and B of the detailed tender notice the bidder must have executed similar work not less than the tender costs in a single year during the period of last five (05) years. The certificate

produced by Respondent No. 4 shows that he had performed work only to the extent of Rs.55,71,282/-, whereas the tender costs is Rs. 61,07,262/-. The Respondent No. 4 is ineligible to participate in the tender process and the technical bid ought have been rejected instead the respondents have favoured the Respondent No. 4 by accepting his tender. The learned counsel further submits that clause 6.40 of the detail tender notice is also violated as scanned copies of the original documents are not submitted. The learned counsel further strenuously contends that the bidder should have successfully executed at least 30% of the tender quantity i.e. 2 M.T. or more work of steel during any one of the previous financial year between 2010-2011 to 2014-2015. The certificate produced by Respondent No. 4 shows that the maximum work of steel done by the Respondent No. 4 up to the year 2014-2015 was only 1.76 M.T. The work done by the Respondent No. 4 in the year 2015-2016 could not have been considered as the same is not the requirement as per tender document. On this count also the respondents have committed an error in accepting the bid of Respondent No.4. Such large scale illegalities are committed in the tender process thereby vitiating the entire tender process. The learned advocate submits that when the terms of the tender are violated, this court can look into the said aspect in its power of judicial review. To buttress his submission, the learned counsel relies on the judgment of

Division Bench of this court in case of **Konark Infrastructure Pvt. Ltd.**

UNR and etc. Vs. Commissioner, Ulhasnagar Municipal

Corporation and others, reported in **2003 (2) Bom. C.R. 838.** The

learned counsel further submits that the petitioner was never given opportunity to put forth his objections to the technical bids submitted by the respondents. On the day, the technical bids were accepted, financial bids were opened. According to the learned counsel it is not the rule of thumb that tender has to be offered to the lowest bidder. The eligibility and the experience as required in the tender notice has to be scrupulously adhered to. The petitioner complies with all the conditions. The Respondent Nos. 3 to 5 were ineligible as per the tender condition. The tender be allotted to the petitioner.

3. Mr. Karlekar, the learned A.G.P. submits that the decision making process was properly conducted. No illegality has been committed. None of the bidders had signed the tender form. The said condition was relaxed for all the bidders. The said condition of unsigned tender form by all did not affect the quality, expertise or ability of the tenderer to carry out the work under the tender documents. The Respondent No. 4 was the lowest bidder. The petitioner has not properly construed

condition No. 11. The steel quantity is required to be executed in last five (05) years i.e. 2 M.T. was for the previous five (05) years that would come to year 2015-2016 as the tender were floated in the 2016 and Respondent No. 4 had done the steel work for more than 3.47 M.T. in the year 2015-2016. It is further submitted by the learned A.G.P. that the contractor should have done similar work to the extent of 30% of the tender costs. The said condition is also writ large in the tender notice.

4. The learned A.G.P. further submits that there are no malafides attributed to the authorities. This Court would not entertain such a petition. The learned A.G.P. relies on the judgment in the case of **Raunaq International Ltd. Vs. I.V.R. Construction Ltd. And others,** reported in **1999 (1) Supreme Court Cases 492** and another judgment of the Apex Court in case of **Municipal Corporation Ujjain and another Vs. BVG India Ltd. And others,** in **Civil Application No. 3330/2018 dated 27.03.2018**

5. We have also heard the learned counsel for the Respondent No. 4 and other respondent.

6. The tenders are invited for the work of Cement Concrete Bandhara at Mondhale. The technical bids are scanned and considered by experts. This court in its writ jurisdiction under article 226 of the Constitution of India, would not sit as an appellate authority over the decision taken by the experts. This court would be more concerned with adherence to the decision making process than the soundness of decision. The scope of judicial review in commercial contracts would be minimal and restricted to the decision making process and adherence to the tender conditions. It will not be open for the Court to evaluate technical bids as the Court does not possess the necessary expertise in that regard. However, in its limited jurisdiction of judicial review in such matters the court would consider the adherence to the conditions in the tender document as writ large in the documents itself.

7. The spectrum of the petitioner's case is about non compliance of clause 6 of the detailed tender notice, more particularly, clause 6-B and the Respondent No. 4 not possessing the necessary experience of the work as laid down under clause 11. Clause 6-B states that the bidder should have executed the similar work not less than the tender cost in a single year during the period of last five (05) years. However, the other conditions appearing in the tender notice restricts the said requirement

to the extent of 30% of the tender costs. The said condition that the bidder should have done similar work to the extent of 30% appears in clause 7 of the tender document.

"A) The contractor/applicant/bidder must have executed at least one similar type of work such as cement concrete bandhara, Kolhapur type wear, any water retaining concrete structure.

B) The cost of such similar works should not be less than 30% of the tender cost in a single year."

8. The another condition which the petitioner states that the Respondent No. 4 has violated is conditions No. 11-B. The condition 11-B requires the bidder to have executed the steel work in any one of the previous five financial years to the extent of 30% of the tender quantity i.e. 2 M.T. and in numerical figures it is stated as 2010-11 to 2014-15, whereas in words it is stated as during previous five financial years. The tender is floated in April 2016, ergo the previous five financial years would be 2011-12 to 2015-16. In the year 2015-2016 the Respondent No.4 has done work of steel to the extent of 3.47 M.T. In view of this, it can not be said that the respondent -authority have allowed relaxation to the

respondents while considering their tender. The terms of the tender were scrupulously considered. No substantial and material condition has been relaxed. The petitioner can not be allowed to take aid of the condition which was a bit different than the one mentioned in the tender document itself.

9. As observed supra the respondents possess the expertise to take decision and consider the experience and eligibility so also technical qualification.

10. No malafides are attributed to the respondent authority in arriving at the decision. In such cases this Court certainly would refrain from exercising its jurisdiction. Reference can be had to the Apex Court judgment in the case of "**Municipal Coporation, Ujjain and another Vs. BVG India Limited and others**" (supra).

11. It is because the matter was pending before this Court and initially stay was granted, the public work has been hampered. We had asked the learned counsel for the petitioner as to whether the petitioner is ready to negotiate the rates with the Respondents. Upon instructions, the learned

counsel for the petitioner states that the petitioner would not lower his rate to the extent of Respondent No.4.

12. The learned A.G.P. has placed on record the communication stating that Respondent No.4 even today is ready to execute the work quoted by him in the tender document. The learned counsel for Respondent No.4 on instructions also states that the Respondent No.4 is ready to execute the work at the same rate.

13. Considering the aforesaid conspectus, the Writ Petition is dismissed. However, with no order as to costs.

14. At this stage, the learned counsel for the petitioner seeks continuation of interim relief.

15. The tender concerns execution of a public work, as it is public work is hampered because of pendency of the Petition. It would not be appropriate to further stall the public work. It is communicated that today also there is scarcity of water and the work is to be done expediently to solve the water problem.

16. In view of that, request for continuation of interim order is refused.

17. Authenticated copy be given.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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