

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

949. WRIT PETITION NO. 14294 OF 2018

BTK AND BPS INFRA JOINT VENTURE THROUGH AUTHORIZED
REPRESENTATIVE AND MANAGER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

*Mr. Ashutosh Kulkarni & Mr. J.N. Singh, Advocates for petitioner.
Mr. A.B. Chate, Asstt. Govt. Pleader for respondents No.1 to 4
Mr. R.S. Deshmukh, Adv. I./b Mr. P.S. Pawar, Adv. for Respt. No. 6*

CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVALA, J J.

DATE : 25th APRIL, 2019

ORAL ORDER:

1. We have heard Mr. Singh and Mr. Kulkarni, learned Advocates for petitioner.
2. Pursuant to the tender published by the respondents in connection with the improvement of road from SH 52, the petitioner had given offer. Four bids were received. The petitioner was held to be ineligible on the ground that the petitioner-firm is not registered. The petitioner has assailed the same in the present writ petition.
3. It is submitted by the learned Counsel for the petitioner

that the respondents have not considered the government resolution dated 27th September 2018 in its correct perspective. Clause 2.9.1b of the Government Resolution dated 27th September 2018 provides that on minor technical grounds, bids should not be rejected. Minor technical grounds detailed in clause 4.5.2(6) states that if at the time of scrutiny of the tender form a doubt arises about qualification and eligibility of the tenderer with regard to the registration, deficiencies of joint venture or that the same is not registered, then opportunity is given to the tenderer and explanation is sought from him so that deficiencies would be cured. The respondents have lost sight of the same. Petitioner was issued with the notice with regard to the joint venture/partnership firm being not registered. The petitioner replied and thereafter submitted registration certificate and this aspect has not been considered. Difference between price quoted by the petitioner and the selected tenderer is more than Rs. 10 crores. The public exchequer is involved. Work order in favour of respondents No. 5 & 6 deserves to be set aside. Petitioner is required to be considered eligible and contract be given to the petitioner.

4. The learned Counsel relies on the judgment of the Apex Court in a case of *Kalu Ram Ahuja and another Vs. Delhi Development Authority and another*, reported in (2008) 10 Supreme Court Cases 696 and contends that without assigning any reason more competitive bid is rejected. That

would show arbitrariness and arbitrary action requires to be set aside. Learned Advocate also relies on the judgment of the Apex Court in the case of *Star Enterprises and others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and others*, reported in (1990) 3 SCC 280.

5. The learned Government Pleader submits that the agreement of the petitioner was not registered. As such, the petitioner was disqualified as per clause 4.3 of the tender document. As per clause 4.3 pre-registered consortiums registered in Stamp Office will be accepted as joint ventures.

6. We have considered the submissions. In matters of contracts this Court should be slow to interfere with the decisions taken by the respondents. The petitioner had submitted tender as joint venture/partnership firm. Clause 4.3 of the tender document requires pre-registered consortiums registered in Stamp Office which will be accepted as joint ventures.

7. The petitioner has submitted the tender not as individual but as a joint venture partnership firm. The petitioner claims to be registered partnership firm under the provisions of the Indian Partnership Act, 1932. The first paragraph of the petition also is on the premise that the petitioner is a joint venture partnership firm

registered under the Indian Partnership Act, 1932. Before opening technical bids documents were perused and it was found that petitioner had not submitted registered document of joint venture partnership firm. The petitioner was issued notice to comply deficiencies within five days. Petitioner submitted a document viz. an application given for registration of firm under the provisions of the Indian Partnership Act, 1932. The same is an application. We asked the learned Advocate for the petitioner about availability of the certificate of the registration of the firm. The learned Counsel for the petitioner candidly replied that the certificate of the registration of the firm is not yet issued to the petitioner.

8. The argument of the learned Counsel for the petitioner is that the Government Resolution dated 27th September 2018, more particularly, clause 4.5(5) has not been followed and same is improper. Petitioner was given opportunity to comply the deficiencies and produce the certificate of the joint venture partnership firm. The petitioner has not produced the same. In fact, the petitioner does not possess the registration certificate as is contended by the petitioner. In absence of said compliance, the petitioner cannot make a grievance that he has been disqualified improperly or illegally. The petitioner certainly was not eligible as per the terms of the tender nor it can be said that the government resolution dated 27th September 2018 has not been adhered to.

9. In the light of above, the writ petition fails and stands dismissed. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Madkar