

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

WRIT PETITION NO. 6088 OF 2020

Vijay Construction Through it's
Proprietor

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Santosh S. Jadhavar, Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for the Respondent No. 1.

Shri R. S. Deshmukh, Senior Advocate i/by Shri D. R. Deshmukh
and Shri G. A. Kulkarni, Advocates for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 16TH OCTOBER, 2020.

FINAL ORDER :

. The present respondent No. 2 published E-tender notice for work of augmentation to Dharur water supply scheme under MSNA having estimated cost of Rs. 10,28,56,484/-. Three bidders had tendered their bids. Upon opening of first envelop, one bidder was held disqualified. Two bids remained in fray. The petitioner was the lowest bidder. The petitioner quoted rate at the rate of 5.90 below the estimated cost. The grievance of the petitioner is that work order is not yet issued to the petitioner.

2. Mr. Jadhavar, the learned advocate for the petitioner submits that, the financial bids of two bidders including the petitioner were opened. The petitioner is the lowest bidder having quoted 5.90% below the estimated cost. The Committee

consisting of President of the Municipal Council and the Chief Officer of the Municipal Council has power to accept the bid and issue the work order. The bid of the petitioner was accepted by the Municipal Council and it was decided to issue work order in favour of the petitioner. The standing committee in its meeting dated 04.06.2020 has unanimously resolved to accept the bid of the petitioner. The learned counsel further submits that, in the interregnum, the Chief Officer was changed. The respondent No. 3 took over charge as Chief Officer and from that time the things changed. The respondent No. 3 demanded Rs. 10,00,000/- from the petitioner for issuing the work order. The petitioner refused to satisfy illegal demand of the respondent No. 3. In view of that, the respondent No. 3 did not issue work order to the petitioner.

3. The learned counsel for the petitioner further submits that, notings on record unequivocally go to prove that the then Chief Officer and the President of the Municipal Council had taken a decision to issue the work order to the petitioner. The matter was referred to the standing committee. The standing committee of the Municipal Council also resolved to award the work to the petitioner. There was no propriety on the part of the respondent No. 3 to refer the matter to the Collector. The Collector is not superior authority. It is within the province of the Municipal Council to issue the work order. The learned advocate relies upon the Government Resolution dated 27th September, 2018 of the Urban Development Department to contend that the directly elected President and the Chief Officer can award the work and

the said decision was already taken.

4. The learned advocate for the petitioner further submits that, under letter at Exhibit – D, the then Chief Officer, Municipal Council has communicated to the Collector that it would be convenient if the work is awarded to the present petitioner. The learned counsel further submits that, the tender document very clearly shows that the condition of tender are as per the Government Resolution applicable to the Public Works Department. The Government Resolution dated 14.06.1989 is referred in the tender document. According to the learned advocate, the circular has been issued by the Government for the tenders of Public Works Department, wherein the requirement of having three qualified bidders is done away with and if two qualified bidders are in the fray, then also the tender process should be proceeded further. Reference is made to the circular dated 29.01.2019. The learned counsel further submits that, it is only after the notices are issued by this Court in the present writ petition, the respondent No. 3 wrote a letter to the Collector on 01st October, 2020 showing difficulties. According to the learned counsel, the terms and covenants of the tenders issued by the Maharashtra Jivan Pradhikaran (for short “M.J.P.”) are not applicable in the present case.

5. Mr. Deshmukh, the learned senior advocate for respondent Nos. 2 and 3 submits that, the M.J.P. is superior authority. The work is augmentation of water supply scheme. The work is to be

supervised by the M.J.P. All sanctions are to be received from M. J. P. The learned senior advocate further submits that, the circular issued by the M.J.P. requires three qualified bidders for finalizing the tender. The learned senior advocate relies upon the circular of the M.J.P. dated 16.01.2020. It is further submitted by the learned senior advocate that, the circular dated 29th December, 2005 issued by the Directorate of Municipal Administration also requires three qualified tenderers for finalizing the tenders. Reference is also made to the Municipal Council Accounts Code to substantiate his contention that three qualified tenderers are required for finalizing the tender process. The learned senior advocate further submits that, the allegations made by the petitioner against the respondent No. 3 demanding Rs. 10,00,000/- are unwarranted and patently false allegations.

6. Upon tenders being invited by the respondent No. 2 for augmentation to Dharur water supply scheme under MSNA, three tenderers had filed their bids. One of them was disqualified. Only two tenderers remained in the fray. Amongst the two tenderers, the petitioner was the lowest bidder having quoted the bid at the rate of 5.90 below the estimated cost.

7. The tender was floated for completion of remaining work unfinished by the person who was given work earlier. The gamut of dispute is whether the tender process ought to have been finalized and work order issued to the petitioner or the respondents would be justified in proceeding with the fresh tender process.

8. In the matters of contract, this Court would be slow to exercise its powers of judicial review, unless it is shown that instrumentality of the State has acted with caprice and arbitrarily.

9. In the matters of contract some liberty is accorded to the principal. It appears from the record that, initially the President and the Chief Officer were of the view that the rates quoted by the petitioner were competitive rates and the tender may be awarded to the petitioner. The standing committee has also given its notings to that effect. It is also matter of record that the work order was never issued in favour of the petitioner at any material point of time, nor any agreement was executed. The concluded contract in favour of the petitioner had never taken place so as to have an enforceable right.

10. It is only on the touch stone of arbitrariness, non adherence to the fair and proper decision making process that the Court would invoke its writ jurisdiction under Article 226 of the Constitution of India. The circular to the Government Resolution governing grant of tenders of Public Works Department relaxes the condition of having atleast three qualified bidders. Even two qualified bidders are sufficient in the tender process to be concluded. The policy of M.J.P. appears to be that there should be atleast three qualified bidders.

11. We need not detain ourselves with the discussion as to

whether the terms and conditions applicable to the tenders floated by the M.J.P. would apply or that of P. W. D. The respondent is Municipal Council. We have the policy framed by the Directorate of Municipal Administration dated 29th December, 2005 governing grant of tender. Clause 39 of the same requires minimum three bidders. Clause 40 of the policy further requires that there should be atleast three qualified bidders or else the procedure for re-tendering as per Clause 39 should be adhered to.

12. The terms, conditions and policy formulated by the Directorate of Municipal Administration would be binding upon municipal council. We need not rely upon the terms and conditions of public works department or M.J.P.

13. It was for the respondents to consider what is best in their interest. It is for the respondents to take decision in that regard. As per the policy of Directorate of Municipal Administration discussed supra, it would not be possible to accept the contention of the petitioner. On facts and circumstances appearing, we would not exercise our writ jurisdiction under Article 226 of the Constitution of India.

14. In the light of that, the writ petition is disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]
bsb/Oct. 20