

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1611 OF 2020

(Vyankatesh Engineering Vs. Union of India & Ors.) WITH

WRIT PETITION NO. 1612 OF 2020

(Vyankatesh G Vs. Union of India & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.V. Khare, Advocate for the petitioner.
Shri N.P. Lambat, Advocate for respondent No.2.

CORAM : R.K. DESHPANDE AND
PUSHPA V. GANEDIWALA, JJ.
DATED : SEPTEMBER 23, 2020.

Common order.

Hearing was conducted through Video Conferencing and the learned counsel for the parties agreed that the audio and visual quality was proper.

The matters pertain to the allotment of work of construction of Railway Shades/Platform Shelters. The petitioner was one of the bidders along with respondent No.3 – M/s. Pal Construction – Bhilai.

On 28/12/2019, the financial bids were opened. The petitioner was found lowest, but on 25/04/2020, the work was allotted to respondent No.3.

These petitions were filed on 19/03/2020, however, due to pandemic situation, unfortunately, the matters could not be heard. They were heard on 22/05/2020 when notice for final disposal was issued and the allotment was made subject to result of these petitions.

We have gone through the reply filed by the respondents opposing the claims made in the petitions. The petitioner claims that it satisfies the financial eligibility criteria as was incorporated in the tender documents which is reproduced below :-

***“Financial Eligibility Criteria :-** The tenderer must have received contractual payments in the previous three financial years and the current financial year upto the date of opening of tender, at least 150% of the advertised value of the tender. The tenderers shall submit Certificates to this effect which may be an attested Certificate from the concerned department/client and/or Audited Balance Sheet duly certified by the Chartered Accountant etc.”*

The work in question was allotted on 25/04/2020. Though respondent No.3 is served in the matters, no one appears for it. Shri Khare, learned counsel appearing for the petitioner submits that keeping in view the pandemic situation and the development which has taken place after filing of these petitions, the petitioner would not be interested in getting the contract awarded to respondent No.3 set aside, but his apprehension is that in the further process of tender work, the petitioner may be disqualified or may not be held eligible to fulfill the financial eligibility criteria in respect of which the dispute is involved in the present petitions.

We need not go into the aspect as to whether the petitioner has fulfilled the financial eligibility criteria as has been laid down and reproduced above. However, if in future, such criteria is incorporated in the tender documents, then it shall be open for the petitioner to approach this Court again if the tender is rejected on the ground that the petitioner fails to fulfill the financial eligibility criteria.

We, therefore, keep all these questions open to be agitated. We dispose of these petitions accordingly granting the petitioner liberty to re-agitate such issue if such action arises in future. We however direct the respondents to communicate the decision of the Tender Committee to the parties concerned as and when the tenders are opened and the decision is taken.

We make it clear that the respondents shall be under the obligation to communicate such decision irrespective of the fact as to whether any such condition is incorporated in the tender documents or not.

The order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

JUDGE