

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

WRIT PETITION NO. 827 OF 2021

M/s. Rajeshwar Construction
Through its Partner
Rajeshwar Panditrao Deshmukh ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

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Mr. Sudhir K. Chavan, Advocate for the Petitioner.
Mr. A.S. Shinde, A.G.P. for all Respondent No.1.
Mr. N.T. Tribhuwan, Advocate for Respondent No.7.

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

DATE : 25th MARCH, 2021

PER COURT:-

1. The tenders / bids were invited for work of upgradation of roads from (i) Dhamangaon to Gavahalwadi and (ii) Manjargaon to Kumbhari. The respondent Nos.6, 7, the present petitioner and one another submitted the bids. The petitioner has raised objection to the acceptance of the technical bid of respondent Nos. 6 and 7. The objection of the petitioner is not accepted by the authorities. Aggrieved thereby, the present writ petition.

2. Mr. Chavan, the learned counsel for the petitioner submits that the authorities have shown favouritism to respondent Nos. 6 and 7 while considering the technical bids. Respondent Nos. 6 and 7 were not eligible and qualified on account of non submission of necessary documents. Respondent Nos. 6 and 7 have produced on record the manipulated documents misleading the authorities. According to the learned counsel, the terms of the tender are not complied by respondent Nos. 6 and 7, still their technical bids are opened and accepted. Learned counsel submits that as per clause No.4.4 B(b)(i), the key equipments for road work and field testing laboratory are detailed and the vibratory rollers are required to be owned by the bidder. In the present case, respondent No.7 does not own the vibratory rollers. The receipt produced by respondent No.7 also does not show that the vibratory rollers are owned by him. The said condition is mandatory condition. As respondent No.7 does not own the vibratory rollers, he is ineligible to participate in the tender process.

3. The learned counsel further submits that the documents produced and relied by respondent No.7 to demonstrate the work completed and to demonstrate the work done are all manipulated and forged documents. The petitioner has made specific pleading in the

memo of the writ petition. The same has not been denied by the respondents in their affidavit in reply and as such, the averments of the petitioner deserve to be accepted. The learned counsel relied upon the judgment and order of this Court in case of ***Hindustani Education Society and others Vs. Union of India and others*** reported in **2009 MCR 767**. The learned counsel submits that when the proper procedure has not been followed, the re-tender process should be adopted. The reliance is placed by the learned counsel on the judgment of the Division Bench of this Court at Nagpur in case of ***R.K. Chavan Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others*** reported in **2020 DGLS (Bom) 1034**. According to the learned counsel, respondent No. 7 was not qualified. Respondent No.6 was also not qualified. The Bank certificate submitted by respondent No.6 is not as per the format given. The technical bids of respondent Nos.6 and 7 ought to have been rejected.

4. According to the learned counsel, the petitioner is ready for negotiation even if the petitioner is L-4. Respondent Nos. 6 and 7 have not complied the terms necessary. The non compliance was not such that could be rectified. In view of the above, the bids of respondent Nos.6 and 7 be rejected.

5. Mr. Tribhuwan, learned counsel for respondent No.7 submits that the vibratory roller has been taken on hire by respondent No.7. Agreement to that effect is also placed on record. The document produced of work done certificate is genuine. The certificate to that effect is issued subsequently only because the said document was not available with the office. The said certificate clearly states that item wise certificate issued is corrected.

6. Mr. Yawalkar, learned Addl. G.P. submits that Clause 4.4 B(b)(i) cannot be read in isolation and the same has to be read with 4.4 B(b) (a).

7. We have considered the submissions. No doubt the terms and condition of the tender document are sacrosanct and required to be complied by all the parties. There are certain terms and conditions of which the defect can be cured.

8. The basic objection of the petitioner appears to be the vibrator roller was required to be owned by the tenderer and respondent No.7 does not own the vibratory roller, but has taken on hire.

9. Clause 4.4 B(b)(i) reads as under:

“(b) Each Bidder must demonstrate:

availability for construction work, either owned, or on lease on hire, of the key equipment stated in the Bid Data Sheet including equipment’s required for establishing field laboratory to perform mandatory tests, and those stated in the Bid Data Sheet. Bidder shall submit an undertaking in the form of an affidavit stating that the Bidder shall mobilize the key equipment listed in the Bid Data Sheet and other equipment, consistent with the Bidder’s proposal regarding work methods, scheduling, and material sourcing and fully in accordance with the requirements stipulated in Section 5 (Specifications) and Section 6 (Drawings).

Availability for construction work of technical personnel as stated in the Bid Data Sheet;

liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract are as per requirements specified in the Bid Data Sheet.

Availability for maintenance work of technical personnel as stated in the Bid Data Sheet.”

10. Clause 4.4 B(b)(i) along with the note reads as under:

“The key equipments for Road Works and Field testing laboratory are:

For Road Works Minimum number of major Plants & Equipment up to 25 km length for road construction work shall be as under.

SN	Name of the Equipment	Quantity	
1	Static Roller	3	Owned/hired
2	Vibratory Roller	1	Owned
3	Truck/Dumper	10	Owned/hired

4	Excavator/Dozer	1	Owned/hired
5	Hot Mix Plant	1	Owned
6	Paver finisher	1	Owned
7	Water Tanker	4	Owned/hired

Note: (i) Above plant and equipments are for road construction packages comprising road length up to 25 km. For road packages above 25 km length, wherever necessary the plants and equipments except Hot Mix Plant and Paver finisher will be increased on the prorata basis.

(ii) For Hot mix bituminous works, Drum Mix/ Hot mix plant, Paver finisher & Vibratory Rollers shall be owned by the bidder. Other equipments can be on owned / hired.

(iii) Hot mist plant, vibratory roller & paver finisher shall be in good condition with due certificate by Assistant Chief Engineer (Mechanical), PWD.

(iv) In case of owned machinery (Paver finisher, Hot Mix Plant, Vibratory Roller) the bidder's before submission of the bid shall behaving the ownership by full payment of the purchase price, full payment of GST, and certificate in bidder's name, issued by Assistant Chief Engineer (Mechanical), PWD."

11. Reading of Clause 4.4 B(b)(i), it states that each bidder must demonstrate availability for construction work, either owned, or on lease on hire, of the key equipments stated in Bid data sheet. Whereas Clause 4.4 B(b)(i)(ii) states that vibratory roller shall be owned by the bidder. The other equipments can be on owned/hired. Both these Clauses above will have to be read harmoniously. Clause 4.4 B(b)(i) suggest that even if the tenderer hires the said equipment, he would

be eligible. Whereas, note (ii) of Clause 4.4.B(b)(i) says that vibratory roller shall be owned by the bidder. The affidavit is filed by the respondent saying that the respondent has on hire the said vibratory roller. Some leverage has to be given to the principal inviting the tender.

12. The purpose of inviting tenders is to get the most competitive bids through competition.

13. It is seen that respondent No.7 has in his possession all the key equipments as suggested in the tender document either on hire and the same would be permissible under Clause 4.4 B(b)(i). As far as the manipulated documents are concerned, the work done certificate is placed on record. The Executive Engineer who has issued the work done certificate has not disputed the same. The petitioner would be stranger to dispute it. The authority issuing the said work done certificate has accepted that the items mentioned in the work done certificate are correct and the same are proper.

14. In case of *Hindustani Education Society* (supra) the Court observed that averments are not denied and as such accepted the case of petitioner therein. In the present case, in the certificate issued by the Executive Engineer, he admitted that items mentioned in the work done certificate are correct.

15. In light of that it would be improper to discard the documents produced by respondent No.7.

16. The financial bids are also open. The Respondent No.7 is L-1. Respondent No.6 appears to be L-2. One another tenderer who is not party to the present writ petition is L-3 and the petitioner is L-4. The petitioner's bid is almost 1 Crore more than respondent No.7.

17. Considering the overall scenario of the matter, it does not appear that the process smacks of favouritism or that the respondent authorities acted *mala fide*. The decision making process it appears is adhered to.

18. In the light of that, no interference is called for. The writ petition as such disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

S.P Rane