

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2578 OF 2021

Kawade Construction, Hawargaon Road,
Shivaji Nagar, Kalamb, Through Authorized
Representative, Vijay Annasaheb Parve Petitioner.

Versus

1. Municipal Council, Kalamb,
District Osmanabad, through,
Chief Officer,
2. Snesu Hyel Pvt. Ltd., Kalamb,
Tq. Kalamb, District Osmanabad ... Respondents.

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Mr. N.B. Khandare, Advocate for petitioner
Mr. K.K. Kulkarni and Mr. A.G. Deshmukh, Advocate for respondent No. 1
Mr. S.G. Jadhavar, Advocate for respondent No. 2

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**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 2nd DECEMBER, 2021

PER COURT :-

The petitioner seeks directions against respondent No. 1 to accept the petitioner's tender.

2. Mr. Khandare, learned Advocate for the petitioner submits that pursuant to e-tender notice No.6/202/2021 published by Municipal Council, Kallamb, District Osmanabad, the petitioner had attempted to upload the tender form, but was unsuccessful, as the system did not accept the same and the message on the portal showed "error." Further, no One Time Password (OTP) was generated though several attempts were made to submit the form. The petitioner has deposited an amount of Rs. 97,402/- and Rs. 2,42,698/- against tender fees, as EMD for two tenders

and the amount was duly received by the Municipal Council.

3. The petitioner made complaint to the Chief Officer of the Municipal Council that the petitioner could not submit its tender due to technical error, displayed on the portal and as such time may be extended. The complaint was also made to the Collector to that effect. It shows that three tenders were received and they were opened on 24-10-2020. According to learned counsel for the petitioner, it was *malafide* act on the part of respondent No.1 in not extending the time. The learned counsel further submits that because of the technical glitches, if participant in the tender process is not in a position to tender the bid for no fault on his part, under such case, time ought to have been extended to enable the tenderer to fill-up the tender.

4. Learned counsel for the petitioner placed reliance on the Judgment of this Court in the case of **Shapoorji Pallonji and Company Private Limited Versus State of Maharashtra**, reported in **Laws (Bom)-2017-9-309**. The learned counsel for petitioner further submits that one Mr. Shridatta Trimbake is working as Head of the Computer Section of Municipal Council, Kallamb. He has taken digital signature of Ashok Kaleshwar Fartade, working as Accountant in the Municipal Council. The digital signature of Shri Phartade was used for publishing tender. Mr Phartade has made complaint on 26-10-2020 to the Chief Officer that Mr. Shridatta Trimbake has prepared digital signature for setting password / OTP and he did not return the key to him and without his consent key was used for

tender process. This shows *malafides*. The learned counsel further submits that after reaching the stage of Bill of Quantity (BOQ), the error displayed on the screen (“Bidder BOQ-1 status does not comply”) and a window for submission of password was also opened on the screen, however, such password/OTP was never generated. The tender process is tainted with *malafide* and fraud.

5. Mr. Kulkarni, learned counsel for respondent No. 1 - Municipal Council submits that the Computer Engineer has set digital signature of the Accountant by virtue of the order of the Chief Officer to float a tender. The petitioner cannot take undue advantage of the same.

6. Upon receiving the complaint of the petitioner, the Collector Office, Osmanabad sought clarification from National Informatics Center (NIC) i.e Agency for conducting the tender process. National Informatics Center under its communication dated 09-11-2020 clarified that bids cannot be hidden on the portal. The learned Advocate further submits that entire process has been properly followed. On the same day, three tenderers have submitted their tenders and they have not faced any technical error.

7. We have considered the submissions.

8. The fact remains that till last date of filing of the tender, the petitioner could not upload the tender. The petitioner made complaint that because of the technical problem, the tender form of the petitioner is not accepted *on-line* and he requested for extension of time. It would appear

that on the same day three tenderers filled in their tenders and they did not face any technical glitches. The time stipulation for the tender will have to be abided by. The other persons filling in the tender did not come across any technical glitches. Only petitioner could not fill up the tender, it would be inappropriate to extend the time, more particularly when fault does not lay with respondent. In the case of *Shapoorji Pallonji* (Supra) the facts were different. The petitioners therein relied upon a screenshot on the bid screen, confirming such uploading on the date of submission to demonstrate that their envelope Nos 1 and 2 were duly uploaded on the scheduled date and before the scheduled time prescribed. It is in those facts, the Division Bench of this Court had directed to accept the tender of the petitioners therein. In the present case, admittedly, the petitioner could not upload his tender may be for one or the reasons, but not on account of the fault of respondent No. 1. In the circumstances the petitioner cannot claim extension of time as of right to upload the tender.

9. There is another facet of the case. The work order is already issued in favour of respondent No. 2 on or about 1st February, 2021. More than half of the period under work order is already over. It would also not be expedient to stall the work at this stage. Considering all these aspects of the matter, no case for interference is made out. Writ Petition is disposed of. No costs.

(R. N. LADDHA)
JUDGE

mtk

(S.V. GANGAPURWALA)
JUDGE