

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

1069 WRIT PETITION NO.6745 OF 2021

SURAJ RAMLING JADHAV

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Nikam, Advocate for the Petitioner.

Mr. A. R. Kale, AGP for Respondents-State.

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

DATED : 16th JULY, 2021.

PER COURT:-

1. The petitioner assails the tender notice dated 10.05.2021 issued by the Public Works Department for various works of roads and repairs of buildings.

2. Mr. Hon, learned senior advocate for the petitioner strenuously contends that the tender notice is *per se* illegal and in contravention of the policy decision of the State under its executive instructions issued from time to time. The learned senior advocate relying upon the Government Resolution dated 17.11.2017 submits that work under Vaishishtyapurna Yojna has to be undertaken in consonance with the terms and conditions enumerated in the said Government Resolution. Placing reliance upon the Circular

dated 19.09.2017, more particularly Clause 3.4, it is submitted by the learned senior advocate that only those works can be clubbed together if they are in one continuance length of the road. No clubbing can be resorted to, if the works are distinctly apart from each other and are not on the same road.

3. The learned senior advocate further relying upon the Government Resolution dated 17.12.2016 submits that the work of the road can be clubbed if it is contiguous, but the work of the building and the road cannot be clubbed together. The said Government Resolution is specific in that regard. The tender notice is also issued for the work which was already executed earlier. The Collector gave Administrative sanction without the technical sanction. The same is illegal. The compatibility certificate is also not obtained. The certificate for the work in the flood zone is also required to be obtained in advance. The same has not been obtained.

4. The learned senior advocate submits that all these deviations are made to favour only one person. It is further submitted by Mr. Hon, learned senior advocate that three tenders were received, two were held disqualified and only one was qualified. In such a case, re-tendering process has to be adopted. It is only to favour one person the respondents have not resorted to

fresh tender and are bent upon awarding the contract to him. It is only because to favour such a person, the illegalities are committed. The small contractors like the petitioner are denuded of their right to participate in the tender process. The very purpose of issuing tender notice is to invite competition on large scale. By clubbing all the works, the respondents want to avoid competition and favour only one tenderer.

5. For all the aforesaid illegalities, the tender process deserves to be set aside and respondents be directed to segregate the work of various roads and also the buildings. The respondents also be directed to comply with all the technical requirements.

6. Mr. Kale, learned A.G.P. submits that if the work of the road is contagious, the work need not be segregated. The same can be clubbed. The work of the building is on the same road for which the work has been issued, there is no need to segregate the work. He also relies on the Government Resolution dated 17.12.2016. The learned A.G.P. further submits that while granting Administrative sanction, the Collector has specifically observed that the works should not be segregated. The legal compliances of compatibility certificate, as to the work on the flood zone would certainly be complied with by the authorities. This Court may not interfere with the tender process on the basis of some technical deviations,

though in the present case no such deviations are founds. The learned A.G.P. relies on the judgment of the Apex Court in a case of **The Bharat Coking Coal Ltd. & Ors. Vs. AMR Dev Prabha & Ors.** in **Civil Appeal No.2197 of 2020** and another judgment in the case of **Michigan Rubber (India) Ltd. Vs. State of Karnataka & Ors.** reported in **2012 (8) SCC 216**. He further submits that it is not the fundamental right of the petitioner to trade with the Government. The writ petition is not maintainable. All compliances are made. The technical sanctions are also obtained and thereafter, Administrative approval has been granted by the Collector.

7. We have considered the submissions canvassed by the learned senior advocate for the petitioner and learned A.G.P..

8. It is trite that, the scope of judicial review in Administrative action and more particularly, in contractual matters is in a narrow campus. The Court normally is loath to exercise its Writ jurisdiction in contractual matters, unless it is found that, the decision making process has been faulted with and/or terms and conditions are so arbitrary and unreasonable that it would shock the conscience of the Court.

9. The work to be undertaken is under the Vaishishtyapurna Yojna. The implementing Agency, it appears is the Public Works Department. Before the tender process can be initiated, technical

sanction and the Administrative sanction are required to be obtained. The Administrative sanction has to be accorded by the Collector though the work is within the limits of Zilla Parishad. In the present case, the Collector, Aurangabad has accorded the Administrative sanction under its order dated 30.12.2020. While granting Administrative sanction, the Collector has specifically observed that the works shall not be bifurcated. The Administrative sanction granted by the Collector is not subject matter of challenge in the present writ petition. The further process could not have been resorted to against the terms and conditions set out by the Collector in the Administrative sanction. The responsibilities are detailed in the Administrative sanction of the Deputy Director, Town Planning, so also of the Authorities. The Authorities certainly would be responsible to comply with the same.

10. The petitioner is basically aggrieved as the works are clubbed and because of that, he is not eligible to participate in the tender process. We can understand the predicament of the petitioner, however, considering the nature of the work and that the work of repairs and improvement of the building is on the same location of the road itself, so also considering the covenant in the Administrative sanction of the Collector that the work should not be segregated, it cannot be said that the clubbing of the works in the tender notice

is against the Administrative sanction. On the contrary, the same is in consonance with the Administrative sanction which is not disputed by any party. The further process is undertaken in consonance with the Administrative sanction. As far as compatibility certificate and work in the flood zone is concerned, the respondents are bound to abide by the same and it is their responsibility.

11. At the first call three tenders were received, two were held eligible and only one was available. Naturally, the Government could not have accepted the tender of the lone tenderer. For that purpose, second call was also issued and in second call also only one tenderer was qualified. In the second call the bidder who was successful in the first process did not participate. The bid accepted is of person who had not participated in first process of tender. In the second call if only one qualified tender is received that can be accepted. Reliance can be placed on Clause 4.3 of the Government Resolution dated 27.09.2018.

12. There is nothing on record to show that the acceptance of the tender pursuant to the tender notice would affect the public exchequer. There is no such record or evidence before us.

13. The tender notice contains the terms and conditions in consonance with the Administrative sanction. It cannot be said that the terms and

conditions are irrational. The Courts would not interfere in such matters. In the matter of framing conditions of a tender document and awarding a contract, some liberty has to be given to the principal and the State Authorities. We do not find the action of the State Authorities to be malicious or misuse of thier statutory powers so as to call interference at the hands of this Court.

14. In light of the above, no interference is called for. Writ Petition is disposed of. No costs.

15. Mr. Hon, learned senior advocate at this stage makes a statement that earlier oral statement was made that the work order would not be issued. We have observed that the petitioner would not have a subsisting right. Moreover, the question of public work is involved. Delay in public work would increase the cost of the work.

16. In light of that, we are not inclined to pass any further order.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE