

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

996 WRIT PETITION NO.7456 OF 2020

M/S PRIYADARSHINI CONSTRUCTION THR ITS PROPRIETOR TAHER
HUSAIN MAINODDIN SAYYEDAND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr T M Venjane
AGP for Respondents State: Mr S G Karlekar

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 23rd February, 2021.

ORDER:

1. Mr. Venjane, the learned Advocate submits that the petitioners are the registered Government contractors. The respondents, in defiance, to the Circular dated 19.09.2017, have issued tenders for maintenance /special repairs and zonal repairs of the roads by clubbing various roads in different talukas in the district. According to the learned counsel, the same is not permissible as per the Government Circular dated 19.09.2017.
2. Under the Circular dated 21.09.2018, the Assistant Engineer, Grade-1 /the Desk Officer issued circular explaining that the tenders shall not be floated by clubbing all the work. The learned counsel submits that the petitioners have made representation not to club the works, however, the respondents have ignored the same and present tenders are issued. The said tenders are issued only with view to favour the big contractors and eliminate the small contractors like the petitioners. By clubbing the works, value of the bids has become Rs. 9.27 crores, Rs. 3.46 crores and Rs. 2.6 crores. The contractors like the petitioners having work capacity of Rs.1.50

crores are unable to participate in the tender process. The very purpose of issuance of tender is negated by such approach of the respondents. The learned counsel relies on Clause 3.4 of the Circular dated 09.09.2017.

3. Mr. Karlekar, the learned A.G.P. submits that Tender Notice No.2/2020-2021 relates to improvement/up-gradation and maintenance of rural roads in Latur District under Mukhya Mantri Gram Sadak Yojana and Tender Notice No.1/2020-2021 relates to maintenance of rural roads under Pradhan Mantri Gram Sadak Yojana in Latur District. The work under Tender No.02/2020-2021 is funded by Asian Development Bank. After deliberations with the Asian Development Bank, it has been decided that clubbing of works as far as possible, should be Taluka wise or up to Rs.10 crores, whichever is less. The work is below Rs.10 crores in each tender.

4. The learned A.G.P. submits that circular dated 19.09.2017 is only for clarification in respect of effect of Goods and Service Tax Act 2017 on works contracts and demands. According to the learned AGP, the petitioners had participated in the tender process and now cannot assail the said terms of the tenders. The tender in issue pertains to the public work. Delay in the public work would affect the cost effectiveness of the work under the tender. The Circular dated 19.09.2017 is relied upon by the petitioner. The prelude to the said circular suggest that the same is clarifying the queries raised by the contractors of all over the State about implementing of the Goods and Service Tax.

5. Clause 3.4 of the said circular no doubt provides that the work shall be clubbed together, if they are in one continuous length of the road. The clubbing shall not be resorted to if the works are distinctly apart from each other and are not on the same road. The said clause further clarifies that for achieving good quality in execution, minimum road length shall be 10 kms. The tender in question is funded by Asian Development Bank. Upon deliberation with the said Bank, the terms of the tenders, it appears, are finalized.

6. There cannot be any dispute about the proposition put-forth by the learned learned Advocate for the petitioner that the tenders are issued to receive the most competitive bids and price and that is fructified if large number of participants can take part. At the same time, the purpose of the work cannot be lost sight of. The respondents have detailed the nature of the work and the funding for the said work. The tender issued under tender Notice dated 02.20021 is taluka wise and up to Rs.10 crores and under Tender Notice 1/20-21 is for adjacent talukas and number of works involved in particular taluka.

7. Considering that the public work would be hampered if the same is stalled and that it would not be in the interest of public and further the work is pursuant to the funding by the Asian Development Bank and the said terms are after deliberations with the Asian Development Bank, we are not inclined to interfere with the tender process.

8. The learned counsel points that under order dated 21st September,

2013 passed in Writ Petition No. 10334/2018 at the Principal Seat to suggest that Clause 3.4 of the Circular dated 09.09.2017 was considered. The order dated 21.09.2018 in Writ petition No.10334/2018 does not decide a particular issue. Under the said order, the Chief Secretary, Rural Development Depart was directed to consider the grievance of the petitioners therein in and take decision.

9. In the present case, we have passed order considering that the present project is funded by Asian Development Bank and the terms are settled in consultation with the financier. In appropriate case, we may consider the scope of the Circular dated 19.09.2017

10. In light of above, the writ petition disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC