

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1112 WRIT PETITION NO.10635 OF 2021

M/S SHIVENDRA CONSTRUCTION
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Mr. A.T. Jadhavar, advocate for the petitioner
Mr. A.R. Kale, AGP for the respondent/State.
Mr.A.G. Deshmukh h/f Mr.K.K. Kulkarni, advocate
for respondent no.4.
Mr.S.S. Thombre, advocate for respondent no.5.

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CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 14th DECEMBER, 2021

PER COURT :-

1. The petitioner assails the rejection of his technical bid and allotting the tender to present respondent no.5.

2. Mr. Jadhavar, learned counsel for the petitioner submits that the petitioner is disqualified on the ground that the petitioner has not done similar work as required under the tender. Respondent no.5 is also placed in the same situation. He has also not done the similar work, still his tender is accepted and the petitioner's technical bid is rejected. The learned counsel submits that the same is arbitrary and illegal and does not stand to reason.

3. The learned advocate for the Municipal Council submits that the petitioner was ineligible in view of the fact that he has not done a single similar work as required under the tender condition, whereas respondent no.5 has done the similar work of the necessary amount.

4. Mr.Thombre, learned counsel for respondent no.5 submits that the petitioner at first instance was ineligible, his tender ought not to have been accepted at all. He has not placed on record the required documents as per the tender. He has not done the similar work as per the tender condition. Respondent no.5 has done two similar works of the amount much more than required under the tender notice. The said work is also completed and the certificates to that effect are also placed on record.

5. The bone of contention is the following clause :-

"XII. QUALIFICATION CRITERIA :-

To qualify for award of the contract, each tenderer in his name should have :-

a) Achieved a Average annual financial turnover of Rs.288.65 Lakhs (in all classes of civil engineering construction works only) in any one year of last five years i.e. 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020 at price level of 2020-21. (information to be

given only in proforma of Statement No.V on page No.36). Above turnover should be certified by the registered Chartered Accountant.

b) Satisfactorily completed as contractor, during last five years. (It should have been commissioned and completed during last five years i.e. 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020 of atleast.

i. Three similar works each having minimum estimated cost of Rs.146.22 Lakhs of civil engineering construction works, at price level 2020-21.

or

ii. Two similar works each having minimum estimated cost of Rs.174.30 Lakhs of civil engineering construction works and at price level 2020-21.

or

iii. One similar work of value not less than Rs.288.60 Lakhs of civil engineering construction work and at price level 2020-21.

(information to be given only in proforma of Statement No.III-Atleast one Similar type of work like Cultural Hall/Ware House Building Hall About 150.00 Lakhs works Completed by Principal Contractor.

c) Satisfactorily executed in any One Year of last five years i.e. 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020 following minimum quantities of work. (information to be given only in proforma of Statement No.VI).

6. As per aforesaid terms and conditions, the tenderer should have satisfactorily executed in any year of last five years i.e. 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 following minimum quantities of works :-

A) Civil Work :-

A) Civil Work :-		
i)	Reinforced Cement Concrete Work M-20 and above	790.00 Cubic Metre
ii)	Brick Work	650.00 Cubic Metre
iii)	Plastering	4550.00 Square Metre
iv)	All types of Flooring/skirting/dado	1120.00 Square Metre
v)	TMT Stell 35 MT	35.00 MT

7. The tenderer also is required to as Contractor commission and complete during last five years i.e. 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 at least one similar work of the amount quantified therein. Similar type of work is also detailed viz:- Cultural Hall/Ware House Building Hall about 150.00 Lakhs works should have completed by the Principal Contractor.

8. Undoubtedly, the petitioner has not done similar work as required. At least documents placed on record dose not depict it. Respondent No.5, it appears that has done two similar works as required under the tender documents i.e. construction of Ware House Building 3000 M.T. capacity at Daund, Dist. Pune. The date and year of commencement is 6th July, 2013 and another similar work is construction of Grain Godown 1000

MT capacity. The date of commencement appears to be of the year 2014. The work is completed in the year 2016-2017. The completion of work is within five years but the commissioning of work is beyond five years. The respondent no.5 was not complying the condition of commissioning similar type of work in last five years.

9. The Municipal Council certainly ought to have considered the terms and conditions threadbare while accepting the tender.

10. It is not permissible for the Municipal Council while accepting the tender to deviate from the terms and conditions of the tender. Deviation of the terms and conditions of the tender is sufficient to infer malafides, arbitrariness on the part of the Municipal Council in considering the tender process. The terms and conditions of the tender are to be applied uniformly to all the tenderers and scrupulously adhered to, deviation therefrom is not permissible. If the terms and conditions are deviated, the same amounts to new terms and condition, which is not permissible nor the Municipal Council would have authority to do so. Deviation from the terms and conditions smacks of malafide and arbitrariness. Arbitrariness has no role in the society governed by rule of law. Arbitrariness is antithesis to justice, equity,

fair play and good conscience. Though respondent no.5 has done the similar type of work of required amount during five years but commissioning of the work is beyond five years. The said aspect it appears is ignored by the Municipal Council while scrutinizing the tender and awarding the work to respondent no.5.

11. It has been submitted by the respondents that almost 30% of the work is completed. The work to be completed as per the tender is the construction of Cultural Hall for Municipal Council, Kallamb. 30% work is completed and some amount must have been paid to respondent no.5. Moreover, the petitioner is also disqualified. The petitioner is not eligible tenderer.

12. Considering the fact that part of the work has already commenced and almost 30% of the work is completed according to the respondents so also considering that the petitioner is not eligible for the tender and that respondent no.5 has completed similar type of work in last five years, we have not interfered in the matter, however, we record our disapproval to the manner in which the Municipal Council has processed the tender. Interfering at this stage, at the behest of the person, who is not eligible in the tender process would be against the public interest

involved, so also the public exchequer.

13. With the aforesaid observations, the
Petition is disposed of. No costs.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)

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