

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

904 REVIEW APPLICATION (CIVIL) NO.103 OF 2021
IN WP/6252/2021

SHRISHRI INFRASTRUCTURE PVT. LTD.
THROUGH ITS AUTHORIZED PERSON
ANIL PRABHAKAR DESHPANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner/Applicant : Mr. S. P. Brahme, h/f Mr. S. H. Tripathi.

AGP for Respondent/State: Mr. S. P. Tiwari.

Advocate for Respondent Nos.2 to 4: Mr. M. S. Sonawane.

Advocate for Respondent No.5: Mr. P. N. Nagargoje, h/f Mr. D. B. Thoke.

...

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

DATE : 03rd December, 2021.

PER COURT:

. The petitioner seeks review of the judgment and order passed by this Court dated 20th September, 2021 passed in Writ Petition No.6252 of 2021 thereby dismissing the writ petition.

2 Mr. Brahme, learned counsel for petitioner submits that the review is filed on three counts; (i) there is an error apparent on the face of record, (ii) circular dated 17th September, 2019 wherein it mandates that opportunity is to be given to the tenderer to comply with the deficiencies, is not adhered to by the respondents, and (iii) the technical bids and financial bids were opened on the same day. As

per the conditions in the tender, the financial bids are to be opened after five days of the opening of the technical bids. This Court while delivering the judgment has not considered the said aspect. The learned counsel submits that there would be a loss to the Public Exchequer. The respondent No.5, who is selected, has quoted Rs.3,75,00,000/- whereas the petitioner has quoted Rs.3,05,00,000/-. The technical bid of the petitioner was rejected on technical ground. The same is not permissible. When Public Exchequer is put to loss, the said aspect needs to be considered. The learned counsel relies on the judgment of the Apex Court in the case of **Municipal Council, Neemuch Vs. Mahadeo Real Estate and others**, reported in, **(2019) 10 Supreme Court Cases 783**.

3 We have also heard Mr. Sonawane, learned counsel for respondent Nos.2 to 4.

4 The technical bid of the petitioner was rejected on the ground that the petitioner did not annex the declaration alongwith the tender document. The petitioner was required to annex the declaration of the contractor on the contractor's letter head in the PDF format.

5 It appears that in the judgment under review, this Court

had noted that the technical bids were opened on 21st December, 2020 and the financial bids were opened on 29th January, 2021. However, it appears that the technical bids as well as financial bids were opened on the same day i.e. on 29th January, 2021. The tender document also contained a clause that the technical bids and financial bids may be opened on the same day.

6 Be that as it may, the fact remains that the petitioner did not annex the copy of the declaration that was required as per the terms of the tender. The instructions to the tenderer specifically required annexing the declaration. The important note was also published in the tender that omission to attach any of the documents as contained under the head “instructions to the tenderer” is likely to invalidate the tender.

7 Reliance is placed on the circular dated 17th September, 2019 to contend that opportunity ought to have been given to remove the deficiencies. The circular requires that if the information given is incomplete, then on the said ground the tenderer should not be disqualified and opportunity be given to the tenderer to give the complete information. In the present case, the date for filling in the tender was extended at the request of the petitioner. Even after extending the date for filling in the tender, the petitioner did not annex

the declaration as was required under the instructions to the tenderer. It is not a case of incomplete information, but the fact is that the document i.e. declaration of the contractor on the contractor's letter head in the PDF format was not annexed. In light of that, the tender of the petitioner was rejected.

8 The petitioner would have been justified in making a grievance of opening the technical bids and financial bids on the same day in case the petitioner would have been disqualified on account of submitting incomplete information. In the present case, the petitioner did not submit the document itself. On that count, it is rejected.

9 The scope of judicial review of an administrative action is limited. The petitioner was made known of the fact that filing of declaration of the contractor on the contractor's letter head in the PDF format is necessary and omission to attach the said document is likely to invalidate the tender. In spite of that, the petitioner did not annex the document though time was extended for filling in the tender.

10 The question of Public Exchequer would have been considered, had the petitioner being disqualified on the ground which could be rectified. It is trite that in a writ jurisdiction, more particularly in contractual matters, the Court would be more concerned with the

decision making process than the decision itself. We do not notice any *malafides* on the part of the respondents while rejecting the technical bid of the petitioner. No error apparent on face of record.

11 In view of that, the review application is rejected. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

nga