

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12840 OF 2021

M/s. Bhagwati Construction,
Himayatnagar, through its Proprietor
Shri Vikas Deorao Deosarkar
Age : 47 years, Occ : Business,
R/o House No.146, Ward No.13,
Himayatnagar, Tq. Himayatnagar,
Dist. Nanded.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Police Works Department,
Mantralaya, Mumbai – 400 032.
2. The Executive Engineer,
Bhokar Division, Zilla Parishad,
Nanded.
3. Chief Accounts and Finance Officer,
Zilla Parishad, Nanded.
4. Additional Chief Executive Officer,
Zilla Parishad, Nanded.

..RESPONDENTS

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Mr.I.D. Maniyar h/f Mr.V.S. Panpatte, advocate
for the petitioner.

Mr.A.R. Kale, AGP for respondent State

Mr. S.B. Pulkundwar, advocate for respondent
nos.2 to 4.

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

DATE : 09TH DECEMBER, 2021

JUDGMENT : (PER S.G. DIGE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. The petitioner is challenging the impugned notice dated 02.11.2021 issued by the respondent no.2. Petitioner is also seeking directions against respondent nos.2 to 4 not to cancel the tender of the petitioner, which has already been accepted on 21.10.2021 by the respondent no.2 for construction of New Health Sub Center at Rui, Tq. Hadgaon, Dist. Nanded.

3. Brief facts of the case are as under :-

(a) The petitioner is a proprietary firm engaged in various construction works. Respondent no.2-Executive Engineer (Works), Respondent No.3-Chief Accounts and Finance Officer and Respondent No.4 - Additional Chief Executive Officer issued tender notice no.(02) 2021-22 inviting Online Percentage Rate Tender from open contractors registered in Zilla Parishad, Nanded, for construction of New Health Sub-Center at Rui, Tq. Hadgaon. In pursuance to the above tender notice, the petitioner submitted its tender form. The financial bid of said tender was opened on 21st October, 2021. The petitioner's tender came to be accepted as lowest bidder (L-1). As per

the Government Circular dated 26th November, 2018 and as per condition no.14 of the tender notice, the petitioner has to submit additional performance security deposit with respondent no.2 within 8 working days from 21.10.2021. Accordingly, the petitioner deposited 1% F.D.R. with the office of respondent no.2 on 30th October, 2021 within 8 working days. However, respondent no.2 by issuing notice dated 02.11.2021 to the petitioner, contended that as per the Government Resolution dated 12.02.2016, it was expected that the petitioner should have deposited the additional performance security deposit within five days i.e. till 28.10.2021 and since the said additional security has not been received by the said office within prescribed time limit, the petitioner is liable for action of cancellation of it's tender. Accordingly, by the said notice, respondent no.2 called explanation of the petitioner within two days. In response to the said notice, the petitioner immediately gave explanation dated 03.11.2021 to respondent no.2 that the petitioner has deposited the additional security amount through F.D.R. on 01.11.2021 and further contended that as per the Government Circular dated 26.11.2018, the additional security amount is required to be deposited within 8 working days, however, the petitioner deposited the said amount within 7 working days, therefore, requested respondent

no.2 allot the said tender work to petitioner. It is further contended that the notice dated 02.11.2021 issued by respondent no.2 is arbitrary and not sustainable in law. There is apprehension to the petitioner that respondent nos.2 to 4 may cancel tender of the petitioner arbitrarily, hence to restrain respondent nos.2 to 4 from taking any decision. This Petition.

(b) During pendency of this Petition, the petitioner amended the petition and sought some additional reliefs as the tender work was allotted to other tenderer Shri Bapu Enterprises.

4. It is the contention of learned counsel for the petitioner that the petitioner is declared as lowest bidder. The petitioner has deposited 1% additional performance security deposit as per the Government Circular dated 26.11.2018 within 8 working days. Though the petitioner was lowest bidder (L-1) and he has deposited the additional security deposit as per the tender condition, the work is allotted to other tenderer without communicating the same to the petitioner. The act of respondent nos.2 to 4 is arbitrary. Hence, it is necessary to pass the appropriate orders against respondent nos.2 to 4.

5. It is the contention of learned A.G.P. that as per the Government Circular dated

26.11.2018, the successful bidder has to submit the additional performance security deposit to the Executive Engineer – Respondent no.2 within 8 days from the date of opening of financial bid. In present case, financial bid was opened on 21.10.2021, the intimation was given to all the participants through SMS and E-mail through the online system of NIC, Pune. The petitioner was aware that the petitioner is L-1 (lowest bidder) in the said tender process. Therefore, from the said date of intimation of opening of financial bid i.e. 21.10.2021, the petitioner was required to submit the additional performance security deposit with the Executive Engineer – Respondent No.2 within 8 days i.e. till 28th October, 2021 but the petitioner failed to deposit the additional performance security deposit with respondent no.2 within the stipulated period of 8 days, therefore, as per the procedure mentioned in Government Circular dated 26.11.2018, the second lowest bidder i.e. L-2 was asked that if it's firm is ready to work at the price lower than that of the first lower bidder. The L-2 firm agreed for it, then the matter was put before the tender committee for final decision and on 25.11.2021, the tender committee decided to reject the first lower (L-1) bidder i.e. present petitioner and allotted the work to the second lowest bidder i.e. (L-2) Shri Bapu Enterprises. Hence, the decision of the respondents is neither

arbitrary nor illegal.

6. We have heard learned counsel for both the parties.

7. Admittedly, the petitioner was declared as lowest bidder. The petitioner has not disputed about information given to the petitioner in respect of opening of financial bid on 21.10.2021. It indicates that the petitioner was aware about opening of financial bid on 21.10.2021. The issue involved in present petition is regarding the deposit of additional security deposit within 8 working day's or 8 day's of opening of financial bid.

8. We have perused the Government Circular dated 26.11.2018. In para no.1 of this resolution, it is mentioned that after opening of envelope no.1 and envelope no.2, the lowest bidder (L-1) has to deposit the additional performance security deposit within 8 days and the period of 8 days shall not be relaxed on any condition. In clause no.2 of the said resolution, it is mentioned that if L-1 failed to deposit additional performance security deposit within 8 days, then L-2 shall be asked in writing about his consent to work at the rate lower than L-1 and if he is agreed then tender of L-2 should be allowed.

9. From reading of the Government Circular dated 26.11.2018, it is clear that the additional performance security deposit has to be deposited by the L-1 within 8 days and not 8 working days. In the present case, the financial tender was opened on 21.10.2021. The petitioner was declared as L-1 (lowest bidder). The petitioner has deposited the additional security deposit with the respondent no.2 on 30.10.2021. It indicates that it is more than prescribed period of 8 days. As petitioner failed to deposit additional security deposit within 8 days, respondent no.2 asked second lowest bidder (L-2) about it's consent to work at rate lower than L-1 i.e. the petitioner. The L-2 (lowest bidder) has accepted the said offer hence tender work is given to L-2 (lowest bidder) Bapu Enterprises.

11. It is settled principle of law that judicial review of contractual transactions by Government bodies is permissible to prevent arbitrariness, favoritism or use of power for collateral purpose. Considering these principle in present case, we do not find arbitrariness or favoritism or illegality as alleged by the petitioner. The petitioner failed to fulfill terms and conditions of tender notice.

12. In view of the above reasons, we pass

the following order :-

ORDER

(i) The Writ Petition is dismissed. No costs.

(S.G. DIGE, J.)

(S.V. GANGAPURWALA, J.)

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