

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.1598/2021

M/s Sunny Construction, through it's Partner Mr. Anil Baburao
Mendhe

..Vs..

The Chief Executive Officer, Zilla Parishad, Bhandara and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Tejas J. Patil, Advocate for the petitioner.

CORAM :- **SUNIL B. SHUKRE AND**
AVINASH G. GHAROTE, JJ.
DATED :- **7.4.2021.**

Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality is proper.

2. Heard Shri Tejas J. Patil, learned counsel for the petitioner. Petitioner was the person interested in submitting a tender in response to the online tender notice for work to be executed on built, operate and transfer basis. The petitioner contends that on 4th January, 2021 i.e. on the last date of submission of the online tenders, he had tried to submit his tender bid online but due to some technical reason he could not do so. According to learned counsel for the petitioner, the technical reason was that the file of Bills of Quantity

(BOQ) could not be uploaded with the tender form as file used to get corrupt in the process. He submits that the petitioner had also sent a message via email on 4th January, 2021 at 4.53 p.m. (Annexure D), but, respondent No.2 refused to acknowledge the fact that there was any technical error in the website because of which the petitioner was prevented from submitting online his tender bid. The petitioner had also sought for extension of the last date of submission of the tenders but the request was refused vide communication dated 6.1.2021, which is impugned herein. Now, the petitioner seeks a direction to respondent No.2 for extending the last date of submission of the tender.

3. We are not inclined to entertain this petition for two reasons. Firstly, deadline of submission of online tender forms was 5 p.m. of 4th January, 2021 and the petitioner's request for extension of the deadline was rejected on 6.1.2021 about two days after this date, which constitutes too long a delay to be condoned and ignored by this Court. The only reason given by the petitioner to explain the delay is that the petitioner required some time in obtaining necessary information through R.T.I. channel. This explanation is not acceptable as the petitioner was aware of rejection of his request of extension of deadline and was also aware that if immediate court intervention was not sought by him, the tender process will proceed further and reach a point of no return from there. Besides, R.T.I. query made was totally irrelevant to the cause of action espoused in this

petition. The petitioner has also not averred in the petition that no processing of the tender form has been done so far and that even no technical bid of the tender forms received by the respondents have been opened so far. Therefore, the delay which has occurred in the present case would disentitle the petitioner from knocking at doors of this Court. If the plea of the petitioner is heard by this Court, it may affect the tender process which by now must have assumed irreversible character. Secondly, the communication dated 6.1.2021 shows that in order to understand the technical error reportedly faced by the petitioner, respondent No.2 called upon the petitioner to send screenshot of the Bills of Quantity (BOQ) file, which according to the petitioner, had got corrupt. But, admittedly, the screenshot was not sent by the petitioner. The learned counsel for the petitioner submits that the petitioner was not in a position to generate the screenshot of the concerned Bills of Quantity (BOQ). If this was so the petitioner would have to blame himself for not assisting him. Then, the impugned communication also indicates that respondent No.2, at his end, did check up the website for finding any technical error in it and it was learnt by him that there was no technical error in the website. This conclusion was reached by respondent No.2 upon finding that by 5 p.m. of 5th January, 2021 four persons had successfully submitted online their respective tender forms and till that time, about 102 persons had downloaded the tender notice. These facts are also admitted by the petitioner. This would reasonably show that there was no technical

error which had crept up in the website which really prevented the petitioner from uploading the Bills of Quantity (BOQ) file. Even four persons would not have been able to submit their tender forms through online process if there was any technical error as contended by the learned counsel for the petitioner in the website. The technical error would have universally affected the other interested bidders but that has not happened in the present case and, therefore, we find that no fault could be found in the impugned communication.

4. In the result, in our opinion, there is no merit in the petition. The petition stands summarily dismissed. No costs.

JUDGE

JUDGE

Nilesh
Tambaskar

Tambaskar.

Digitally signed by
Nilesh Tambaskar
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