

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1395 OF 2021

PETITIONER: M/s. Khalatkar Construction Infra Pvt. Ltd.
Rainbow Greeners (Joint - Venture).

...VERSUS...

RESPONDENTS:

1. Nagpur Mumbai Super Communication Expressway Limited, through its Director In Charge, MSRDC Ltd., Opposite Bandra Reclamation Bus Depot, K.C.Marg, Bandra (W), Mumbai.
2. Maharashtra State Road Transport Corporation Ltd., through its Vice Chairman & Managing Director, Nepean Sea Road, Priyadarshini Park, Mumbai.
3. Ministry of Public Works Department, through its Secretary, Mantralaya, Mumbai.

Shri R.D.Heda, Advocate for petitioner
Shri A.D.Mohgaonkar, Advocate for Respondent Nos. 1 and 2
Shri A.A.Madiwale, AGP for respondent no.3

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**
DATE : 01/04/2021.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

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

2] Heard Shri Heda, learned counsel for the petitioner and Shri Mohgaonkar, learned counsel for Respondent Nos. 1 and 2 who appears by waiving notice and Shri Madiwale, learned AGP for Respondent No. 3.

3] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

4] The petitioner has been found to be disqualified in the technical bid which he submitted in response to the tender notice issued for execution of plantation work. The reason given for disqualification of the petitioner is that he failed to qualify the categories (I) and (III) mentioned in clause 2.2.2.6 pertaining to Eligible Experience on Projects in respect of each category enumerated therein. Sub-clause (i) and sub-clause (iii) respectively

related to Category (I) and Category (III). Sub-clause (i) prescribes that the bidder must possess experience of "Infrastructure Development Project" involving water source development/water supply/micro irrigation system/ plantation/ landscaping & beautification work for Government/Semi Government organizations etc. Sub-clause (iii) refers to the experience of operation & maintenance of tree plantation & landscape garden/park for a minimum of 2 years for Government/Semi Government organizations.

5] Before we turn to sub-clause (iii) of Clause 2.2.2.6, we would first consider sub-clause (i) of the said clause. Sub-clause (i) is about possession of experience in "Infrastructure Development Project" and then the further experience required under this clause is of development of such project relating to either water source development or water supply or micro irrigation system or plantation or landscaping and beautification of the landscape.

6] According to the learned counsel for the petitioner, the petitioner possesses sufficient experience in infrastructure

developmental works and for this purpose, the petitioner relies upon the certificate of experience filed alongwith this petition at page 93. This certificate of experience shows that the work carried out by the petitioner was "Renovation & Construction of E/W Lining and Structures for Dighori Branch Asolamendha Main Canal". This work was obviously not of the category of "Development of Infrastructure" and it was only in respect of Renovation & Construction of E/W on the structure already existing. Therefore, this certificate would not qualify the petitioner for Category (I) as prescribed in sub-clause (i) of Clause 2.2.2.6.

7] The petitioner also relies upon another certificate which is annexed to the petition at page 96. This certificate also speaks about "Renovation & Development of 200 m Avenue Road". As stated earlier, work relating to renovation and further development is not the same as development of infrastructure project, as in the former what happens is carrying out of necessary repairs and making some new additions to the existing work or structure, while in the latter, a project is to be constructed and completed right from the scratch, starting from designing, planning, preparation of layouts, levelling of

lands, taking proper measurement, excavation and making construction in accordance with the plan.

8] So, we find that the petitioner does not qualify for this contract, as he fails to satisfy the requirement of sub-clause (i) of Clause 2.2.2.6 of the tender document. This being the position, we do not find that any purpose would be served by considering the eligibility of the petitioner in terms of category (III) as well, with the eligibility being required for each of the categories. The petition thus fails and it is dismissed accordingly. Rule is discharged. No costs.

JUDGE

JUDGE