

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

WRIT PETITION NO. 3722 OF 2021

New Energy Bahudeshiya Sanstha, through its President, Chandramani Kashinath
Gondane,
..VS..

The Municipal Commissioner, Nagpur Municipal Corporation, Nagpur and Anr.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R. K. Maheshwari, Advocate for petitioner.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : 27.09.2021

1. Heard Shri Maheshwari, learned counsel for the petitioner.

2. The submission is that the Corporation, which has invited bids for award of the contract for Comprehensive Rehabilitation Scheme of the beggars has rejected technical bid of the petitioner on illegal grounds. It is submitted that by the impugned communication, the respondent Corporation informed the petitioner that during technical evaluation by the duly constituted committee, it was found that the petitioner did not fulfill documentation criteria and therefore, the technical bid was rejected.

3. The learned counsel for the petitioner submits that by the communication dated 31.08.2021, the petitioner was called upon to submit building permit and sanction plan together with building completion certificate in respect of the building from which the facilities under the said Scheme were to be provided, if contract was awarded. Learned counsel for the petitioner further submits that this was not the part of the tender conditions and one of the tender conditions, condition No.12 only said that the rent agreement and current house tax receipt in respect of the building, from where the facilities were to be provided, should be submitted, which documents were already submitted by the petitioner but, later on, by the letter dated 31.08.2021, the respondents required the petitioner to submit these additional documents. According to him, such an effort on the part of the respondents amounts to inserting new conditions after the technical bids were opened, which is not permissible in law.

4. As regards condition No.12, on which heavy reliance has been placed by learned counsel for the petitioner, we must say that at the first blush, the argument of the learned counsel for the petitioner looks to be quite impressive. This clause prescribes that only the rent agreement in case the building has been taken on rent and house tax receipt should be the documents which must be furnished along with the technical bid. There is also no doubt about the fact that both these

documents have indeed been submitted by the petitioner at the time of the bidding. But, the rent agreement or tenancy agreement would be legal and valid in law only when the building in respect of which the tenancy/ rent agreement has been executed is legal and that would mean that it has been constructed after sanction plan as well as building permit has been obtained and that its building completion certificate has also been taken by the owner of the building. In this respect, it is useful to refer to the provisions contained in Section 263(2) of the Maharashtra Municipal Corporation Act, which reads as under :-

“(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any work, until-

(a) permission has been received from the Commissioner in this behalf, or

(b) the Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission.”

5. In the present case, admittedly, building completion certificate has not been obtained and admittedly the landlord of the building has applied for regularization of the building to the Corporation and the application of the landlord is still pending. This would mean that petitioner could not have taken on rent the

building in question and so the impugned action, on a deeper consideration, could not be said to be amounting to insertion of new conditions.

6. In these circumstances, we find that disqualification of the petitioner on the technical ground cannot be said to be arbitrary or illegal.

7. The Writ Petition stands **dismissed**. No costs.

JUDGE

JUDGE

Kirtak