

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

WRIT PETITION NO.4697/2021

Gughane Infrastructure Private Limited, Yavatmal
..Vs..
Chief Officer, Municipal Council, Ner Nababpur and another

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

Court's or Judge's Order

Mr. H.R. Gadhia, Advocate for the petitioner.
Mr. Firdos Mirza, Advocate for respondent No.1.
Mr. Neeraj R. Patil, A.G.P for respondent No.2.

CORAM :- SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.
DATED :- 23.11.2021.

Heard Mr. Gadhia, learned counsel for the petitioner, Mr. Mirza, learned counsel for the caveator - respondent No.1 and Mr. Patil, learned A.G.P for respondent No.2.

2. By this petition, the petitioner has questioned some of the terms and conditions of the tender notice dated 24.9.2021. The first objection taken by the learned counsel for the petitioner is in respect of the financial work of the tenderer. He submits that when the tender notice was issued on 24.9.2021, financial worth of the bidder was not specified and later on by issuing a backdated corrigendum dated 17th August, 2021, it was specified to be equivalent to immovable property having

minimum value of Rs.10 Crores. He points out that later on by another corrigendum dated 12.10.2021, the limit of financial worth was reduced to Rs.2.5 Crores and then by yet another corrigendum dated 12.10.2021, issued on the same day, it was restored to the original limit of Rs.10 Crores. He submits that this has been done by the respondents with a view to favour some of the bidders.

3. The argument is fallacious and deserves rejection on two grounds. Initially when the condition No.10 was prescribed in the tender notice dated 24.9.2021, there was no specification of the amount of the financial work and, therefore, by a corrigendum dated 17.8.2021, it was specified to be in the nature of ownership of immovable property having minimum value of Rs.10 Crores. It is true that this corrigendum shows the date as 17th August, 2021 and refers to the tender notice dated 24.9.2021. It appears that mentioning of this date, 17th August, 2021, appears to be a typographical error as no authority and no officer in it's or his senses would issue a corrigendum to a tender notice which is yet to be published. The respondent No.1 has in fact informed the petitioner that it was an inadvertent mistake.

4. Then, when the condition regarding financial capacity itself was unclear, it became necessary for the respondent to add clarity to that condition and, therefore, by corrigendi issued from time to time, the amount of the financial worth was fixed to be minimum at Rs.10 Crores.

If such a clarification has been issued, may be thrice, nothing amiss or devilish can be seen in it, as ultimately, the limit of Rs.10 Crores minimum fixed for the first time was finally maintained. Besides, there is no material placed on record to substantiate the argument that it has been done to favour some chosen ones. Therefore, we do not find anything wrong in clarifying the original condition No.10 by issuing corrigendum and ultimately fixing the financial worth at minimum of Rs.10 Crores.

5. The further objection taken by the learned counsel for the petitioner relates to the price escalation clause which is clause 11 and the requirement of depositing amount of Rs.36,75,100/- at the rate of 2% of the work. Learned counsel for the petitioner submits that under rule 142 of the Maharashtra Municipal Council Accounts Code, 2013 (for short "Code of 2013"), Municipal Council is obliged to be guided by the terms and conditions prescribed by the P.W.D. in its various guidelines and Government Resolutions whenever the conditions of the tender are silent and in this case, the clause No.11 regarding price escalation and the requirement of making of 2% deposit both being not as per the Government Resolution dated 27.9.2018 issued by P.W.D., are illegal.

6. Again we would say that the argument is fundamentally wrong. The argument proceeds on the premise that conditions of the tender notice in question regarding price escalation and requirement of depositing

of an earnest amount are silent and, therefore, as per rule 142 of the Code of 2013, guidance should have been sought by the Municipal Council from the guidelines and Government Resolutions issued from time to time by P.W.D. for stipulating the said conditions. If we peruse the clauses in question i.e. clause No.11 and one relating to requirement of 2% earnest amount, we would find that both these clauses are not silent, rather they are eloquent enough to tell us that for the tender works, price escalation clause would not be applicable and the bidders would be required to deposit 2% amount as earnest money. The relevant clauses of the Government Resolution dated 27.9.2018 which have been relied upon by the petitioner are 2.7 and 2.9.5(b). Clause 2.7 of the Government Resolution lays down that the earnest money can be fixed to be at 2% of the amount of the tendered work if the value of the work is upto Rs.1.50 Crores and this amount could be 0.50% or Rs.1.50 Lakhs, whichever is higher, if the value of the tendered work is more than Rs.1.5 Crores. Clause 2.9.5 says that if the entire amount of the tendered work is available with the department, then only clause imposing curb on price escalation clause can be stipulated otherwise it must not be. These clauses, as per rule 142 of Code of 2013, could have been taken recourse to only if the tender notice in question had been silent on the aspects of price escalation and earnest amount but that is not the case here. The tender notice in fact is specific and eloquent and, therefore, no recourse could be taken by the petitioner to the provisions of rule 142 of Code of 2013

so as to indirectly apply the conditions of the Government Resolution dated 27.9.2018 to the tender notice in question.

7. In the circumstances, we find that there is no substance in this petition and it deserves to be dismissed summarily.

8. Apart from what is stated above, we find it necessary to make a mention about the inordinate delay caused by the petitioner in filing the present petition. The tender notice was issued on 24.9.2021 and the last date of submission of the bids was 18.10.2021. Although the petitioner was agitated over some conditions of the tender notice which he felt to be unreasonable and even against some Government Resolutions issued by P.W.D., the petitioner chose to let the deadline pass by and it was only on 26th October, 2021 that the petitioner filed this petition. That was after expiry of the last date of submission of bids. The petitioner, it is worth mentioning, has also made an alternate prayer seeking direction of this Court to allow the petitioner to provisionally participate in the tender process. Making of such an alternate prayer after the last date of submission of bids has expired, is beyond our comprehension. Be that as it may, more important is the issue of delay and latches. No explanation whatsoever has been given by the petitioner for belated filing of this petition. We do not know the reason as to why such an attempt has been made by the petitioner so belatedly. So for this reason

also, we do not think that this petition can be entertained by us.

9. At this stage, Mr. Mirza, learned counsel for the caveator - respondent No.1 submits on instructions that work order has already been issued, which is disputed by the learned counsel for the petitioner. We do not wish to go into this controversy, it being not necessary after what we have found here already.

10. In the circumstances, we find that this petition deserves to be summarily dismissed and it is **dismissed** accordingly. No costs.

JUDGE

JUDGE

Tambaskar.