

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1274 OF 2022**

M/S BHAGWATI CONSTRUCTION THR ITS PROPRIETOR SHRI
VIKAS DEORAO DEOSARKAR ..PETITIONER

VERSUS

ZILLA PARISHAD NANDED AND ANOTHER ..RESPONDENTS

**WITH
WRIT PETITION NO.2200 OF 2022**

M/S. BHAGWATI CONSTRUCTION ..PETITIONER

VERSUS

ZILLA PARISHAD NANDED AND ANOTHER ..RESPONDENTS

**WITH
WRIT PETITION NO.2211 OF 2022**

M/S. BHAGWATI CONSTRUCTION ..PETITIONER

VERSUS

ZILLA PARISHAD NANDED AND ANOTHER ..RESPONDENTS

**WITH
WRIT PETITION NO.2235 OF 2022**

M/S BHAGWATI CONSTRUCTION THR ITS PROPRIETOR SHRI
VIKAS DEORAO DEOSARKAR ..PETITIONER

VERSUS

ZILLA PARISHAD NANDED AND ANOTHER ..RESPONDENTS

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Mr. D. S. Bagul, Advocate for the Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondent Nos.1 and 2.

Mr. A. V. Indrale Patil, Advocate for Respondent No.3 in WP/2200/2022, WP/2211/2022 and WP/2235/2022.

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**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

DATED : 24th MARCH, 2022.

PER COURT:-

1. The petitioner in Writ Petition No.1274/2022 has impugned the order dated 14.01.2022 thereby rejecting the technical bid of the petitioner on the ground that, there was flaw in the agreement of machinery tender.

2. The learned counsel for the petitioner submits that, respondent nos.1 and 2 ought to have given notice to the petitioner if any discrepancies appeared in the tender documents submitted by the petitioner before rejecting the technical bid submitted by the petitioner. He invited our attention to the agreement entered into between the petitioner and Mr. Chandrakant B. Chinchalkar annexed at Exhibit-C to the petition dated 13.11.2021 in respect of hiring machinery which were required according to the petitioner for the work if would have been awarded to the petitioner by respondent nos.1 and 2. He invited our attention to the letter dated 23.11.2021 annexed by the Zilla Parishad in the affidavit-in-reply addressed by Mr. Chandrakant B. Chinchalkar to the Executive Engineer informing that, the agreement dated 13.11.2021 between the petitioner and Mr. Chinchalkar was cancelled.

3. It is submitted by the learned counsel that, the financial bid of the petitioner being lowest, the respondent nos.1 and 2 could not have rejected the technical bid submitted by the

petitioner and that also on the ground that there was discrepancy in the agreement entered into between the petitioner and Mr. Chinchalkar. He invited our attention to the condition nos.3 and 4 at pages 24 and 25 of the petition and would submit that, the petitioner was not required to submit such certificate alongwith tender documents.

4. It is submitted that, since there is no work order issued in favour of a successful bidder, this Court shall interfere in the tender process initiated by respondent nos.1 and 2. He placed reliance on the judgment of this Court in case of **R.K. Chavan Infrastructure Pvt. Ltd. Through its Director Mr. Rajkumar M. Chavan Vs. The State of Maharashtra through Secretary Public Works Department and Others** reported in 2010 SCC OnLine Bom 2263 in support of the submission that, the petitioner once having been declared qualified, could not have been disqualified subsequently.

5. The learned counsel for Zilla Parishad on the other hand submits that, machinery agreement for taking the machinery on hire entered into between the petitioner and Mr. Chinchalkar was admittedly cancelled on the date of the petitioner filing technical bid. He submits that, since the tender was for a short period, the petitioner was not granted opportunity to rectify the deficiencies in the tender documents. He placed reliance on the judgment of the Hon'ble Supreme Court in a case of **M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar**

Jain and Ors. reported in **2022 LiveLaw (SC) 302** and in particular paragraph no.23 and submits that, remedy if any of the petitioner would be to file Civil Suit for damages.

6. It is not in dispute that, the technical bid of the petitioner was rejected on the ground that there was flaw in the documents in respect of the tender in question for hiring machinery.

7. Though the petitioner had impleaded Mr. Chandrakant P. Chinchalkar as party-respondent no.3, the petitioner sought liberty to delete his name from the cause title of the petition. The petitioner was fully aware that, the said Mr. Chinchalkar had terminated the agreement entered into between the petitioner and Mr. Chinchalkar. The petitioner, however, chose to delete the name of the said Mr. Chinchalkar from the cause title of the petition. The petitioner however did not bother to inform the Zilla Parishad about such cancellation of its agreement with Mr. Chinchalkar.

8. The learned counsel for the petitioner does not dispute that, the said agreement entered into between the petitioner and said Mr. Chinchalkar was terminated on the date of filing of technical bid.

9. The Hon'ble Supreme Court in case of **M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar Jain and Ors.** (supra) has held that, Writ Court should refrain itself from imposing its decision over the

decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. It is also held that, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.

10. In paragraph no.26 of the said judgment it is held that, a word of caution ought to be

mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone.

11. The Hon'ble Supreme Court was pleased to set aside the order passed by the learned Single Judge of the High Court. The principles laid down by the Hon'ble Supreme Court in a case of **M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar Jain and Ors.** (supra) would apply to the facts of this case. We are respectfully bound by the principles laid down in the said judgment.

12. In this case, there is no dispute that the agreement entered into between the petitioner and Mr. Chandrakant P. Chinchalkar for supply of machinery on hire was terminated. In this circumstances in our view, the technical bid of the petitioner was rightly rejected by respondent nos.1 and 2. No interference is thus warranted with the decision of the respondent nos.1 and 2 in rejecting the technical bid of the petitioner.

13. In so far as other three matters are concerned, it is not in dispute that the facts in other three petitions are identical to the facts of

this case except the fact that, in these three matters the work order is already issued by respondent nos.1 and 2 in favour of the successful bidders.

14. Even according to the learned counsel for the petitioner, the respondent no.3 has already started carrying out work pursuant to the work orders issued by respondent nos.1 and 2 and has already completed about 10% of work.

15. In our view, the judgment of the Hon'ble Supreme Court in case of **M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar Jain and Ors.** (supra) will apply with greater force in case of all these three matters. We are therefore not inclined to interfere with the issuance of work orders in the remaining three matters on the similar ground.

16. In so far as judgment of the Division Bench in case of **R.K. Chavan Infrastructure Pvt. Ltd. Through its Director Mr. Rajkumar M. Chavan Vs. The State of Maharashtra through Secretary Public Works Department and Others** (supra) relied upon by the learned counsel for the petitioner is concerned, the facts before this Court in the said case were totally different. In this case it is not the case of the petitioner that, the petitioner was initially declared qualified and was subsequently declared disqualified. The judgment in case of **R.K. Chavan Infrastructure Pvt. Ltd. Through its Director Mr. Rajkumar M. Chavan Vs.**

The State of Maharashtra through Secretary Public Works Department and Others (supra) would not advance the case of the petitioner.

17. The petitions are devoid of merit and are accordingly dismissed. No orders as to costs.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE

Devendra/March-2022