

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3466 OF 2022

H.K. Construction,
Through its Proprietor,
Manik S/o Harishchandra Ghule,
Age : 44 years, Occ. Business,
R/o Davangaon, Tq. Renapur,
Dist. Latur

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Maharashtra State, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad Beed,
Tq. & Dist. Beed.
3. The Executive Engineer,
Rural Water Supply Department,
Zilla Parishad, Beed

...Respondents

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Mr. P.P. More, advocate for petitioner.
Mr. K.N. Lokhande, AGP for respondent-State.
Mr. P.D. Suryawanshi, advocate for respondent nos.2 & 3.
Mr. A.R. Tapse, advocate for intervenor.

**WITH
WRIT PETITION NO.3467 OF 2022**

Ajay Construction,
Through its Proprietor,
Hanumant s/o Vithalrao Ghodke,
Age : 58 years, Occ. Business,
R/o Yogeshwari, Ambajogai,
Tq. Ambajogai, Dist. Beed.

...Petitioner

Versus

1. The State of Maharashtra

Through its Secretary,
Rural Development Department,
Maharashtra State, Mumbai.

2. The Chief Executive Officer,
Zilla Parishad, Beed,
Tq. & Dist. Beed.

3. The Executive Engineer,
Rural Water Supply Department,
Zilla Parishad, Beed

...Respondents

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Mr. P.P. More, advocate for petitioner.

Mr. K.N. Lokhande, AGP for respondent-State.

Mr. P.D. Suryawanshi, advocate for respondent nos.2 & 3.

Mr. A.R. Tapse, advocate for intervenor.

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

DATED : 14th MARCH, 2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of the parties, both the petitions were heard together and being disposed off by a common order.

2. In Writ Petition No.3466 of 2022, the petitioner has impugned the rejection of the technical bid of the petitioner on 05.03.2022 and seeks a writ of mandamus directing the respondent nos.2 and 3 to permit the petitioner for financial bid in the impugned tender.

3. In Writ Petition No.3467 of 2022, the petitioner has impugned the declaration of result of technical bid dated 03.03.2022 rejecting the technical bid of the petitioner and for a writ of mandamus

directing the respondent nos.2 and 3 to permit the petitioner for financial bid in the impugned tender.

4. The facts of both the petitions are identical. Mr. More, the learned counsel for the petitioner in Writ Petition No.3466 of 2022 invited our attention to various exhibits annexed to the petition and also to the impugned rejection of the technical bid of the petitioner on the ground that the technical bid submitted by the petitioner was not in accordance with the format prescribed in the tender document. He also invited our attention to the experience certificate submitted by his client to respondent nos.2 and 3 and would submit that there was no infirmity in the experience certificate submitted by the petitioner. He relied upon the Government Circular dated 07.03.2019 and more particularly clause 2 thereof and would submit that by the said government circular, it was made clear that the technical bid shall not be rejected on the issues such as PTC, machinery, income related document or similar work conditions were not submitted by the bidders. He submits that the technical bid of the petitioner has not been rejected on the ground that the petitioner was not having requisite experience required for submission of tender. He submits that these minor discrepancies out to have been ignored as per the government circular and thus the technical bid could not have been rejected on that ground.

5. The learned counsel for the petitioner invited our attention to

the averments made in the affidavit in reply filed by respondent nos.2 and 3 and also the documents annexed thereto in support of the submission that the financial bid was not issued on 08.03.2022 as would be indicated from the documents annexed. He submits that the document relied upon by the respondent nos.2 and 3 itself would indicate that the work order was issued not on 08.03.2022 but on 10.03.2022. He submits that the work order relied upon by the respondent nos.2 and 3 and the newly added party is exfacie anti-dated.

6. The next submission of the learned counsel for the petitioner is that respondent nos.2 and 3 has illegally issued the work order in favour of the successful bidders by splitting the tender and that also at the estimated amount mentioned in the tender invited by respondent nos.2 and 3, though the bid of the petitioner was much below the estimate of the respondent nos.2 and 3.

7. The learned counsel also invited our attention to the representation made by the petitioner on 07.03.2022 and would submit that such representation was also not decided.

8. In so far as Writ Petition No.3467 of 2022 is concerned, it is submitted by the learned counsel that in this case, the tender submitted by the petitioner was at much lower rate than the estimated amount. The work order in this case was also anti-dated according to the learned counsel. Rest of the arguments advanced in

the first matter are adopted in this matter also.

9. The learned counsel for respondent nos.2 and 3 on the other hand invited our attention to the tender condition and more particularly relating to the technical bid i.e. condition no.3 and would submit that all the bidders were required to submit experience certificate according to the tender. He invited our attention to the experience certificate submitted by the respondent no.4 in both the matters and to the experience certificate submitted by the petitioner and would submit that instead of submitting the experience certificate in the requisite format as prescribed in the tender, the petitioner has simplicitor given the list of works carried out by the petitioner.

10. In so far as reliance placed on the Government Circular by the learned counsel for the petitioner is concerned, it is submitted that the Government Circular which directs not to reject the tender on the ground of small error is concerned, he submits that the condition in the tender document requiring submission of experience certificate in a prescribed format would not fall under any of the exception mentioned in the said circular pressed in service by the petitioner. The learned counsel for respondent no.4 in both the matters adopted the arguments advanced by the learned counsel for respondent nos.2 and 3 and would submit that this petitioner is not entitled to oppose the work order only issued to his clients by respondent nos.2 and 3. He submits that under the tender condition, the respondent nos.2 and

3 are empowered to award the contract by splitting the contract in two parts. There was an agreement entered into between both the parties who were given the work order by respondent nos.2 and 3 by way of joint collaboration.

11. A perusal of the record indicates that in both the matters, respondent nos.2 and 3 have rejected the technical bid submitted by the petitioners on the ground that the experience certificate submitted by the petitioners was not in accordance with the format prescribed under the tender document.

12. Clause 3 of the tender bid in so far as conditions relating to the technical bid is concerned, it is clear that the experience certificate was required to be submitted in a particular format and by furnishing various details specifically prescribed therein. In so far as the newly added parties are concerned, they have submitted their experience certificate in the format as prescribed in the tender document.

13. A perusal of experience certificate submitted by the petitioners would indicate that the same was not in the format as prescribed in the tender document. A perusal of condition no.3 would clearly indicate that there was a specific purpose for submitting the experience certificate with the details which would be relevant for the purpose of deciding the eligibility of the petitioner while considering the technical bids. In our view, there is no infirmity in the decision taken by respondent nos.2 and 3 in rejecting the

technical bid of the petitioner, on the ground that the experience certificate submitted by the petitioners thus was not in the format prescribed by respondent nos.2 and 3 in the tender document.

14. In so far as the submission of the learned counsel for the petitioner that the work order has been anti-dated by respondent nos.2 and 3 is concerned, the learned counsel for the petitioner strongly placed reliance on the tender summary report dated 13.03.2022 annexed to the affidavit in rejoinder and vehemently urged that the said certificate would clearly indicate that on 10.03.2022, the financial bid was opened and thus there was no question of respondent nos.2 and 3 issuing the work order 2 days prior to the opening of financial bid.

15. We have perused the said documents annexed at page no.99 of the rejoinder. It would clearly indicate that the said document is downloaded on 13.03.2022 thereby giving updated summary of the financial bid as on 10.03.2022. On perusal of the said document, it cannot be conclusively said that the work order was issued on 10.03.2022 and not on 08.03.2022. There is no substance in this submission of the learned counsel for the petitioners.

16. So far as the submission of the learned counsel for the petitioners that respondent nos.2 and 3 could not have split the contract between two parties is concerned, a perusal of the tender document indicates that this split of tender between two parties is

permissible under certain circumstances. It is the case of the newly added party as well as the respondent nos.2 and 3 that there was an agreement of joint collaboration between the two parties. There is thus no substance in the submission of the learned counsel for the petitioners.

17. In so far as the submission of the learned counsel for the petitioners that though the bid of the petitioner was on the lower side, financial bid of the petitioners was not opened thereby causing loss to the public exchequer by accepting the bid of respondent no.4 is concerned, in our view since the technical bid of the petitioner itself was rightly rejected, the question of the petitioner urging at this stage that there was any loss to the public exchequer by awarding the contract at the estimated price, is of no substance. The respondent nos.2 and 3 have already issued work order in favour of respondent no.4.

18. In our view there is no merit in these petitions. Both the petitions are accordingly dismissed. Rule is discharged. No order as to costs.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)